

1 SB451  
2 136294-3  
3 By Senator Pittman  
4 RFD: Banking and Insurance  
5 First Read: 22-MAR-12

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7  
8 SYNOPSIS: Under existing law, insurance adjusters are  
9 defined to be representatives of the insurance  
10 company and not of the insured.

11 This bill would provide for the licensing  
12 and regulation of public adjusters of insurance  
13 claims. This bill would state legislative intent to  
14 make Alabama's law substantially similar to the  
15 Public Adjuster Licensing Model Act developed by  
16 the National Association of Insurance  
17 Commissioners.

18  
19 A BILL  
20 TO BE ENTITLED  
21 AN ACT

22  
23 Relating to insurance; to provide for the  
24 qualifications and procedures for the licensing of public  
25 adjusters; to provide definitions and exceptions to the  
26 licensing and registration requirements; to require public  
27 adjusters to take and pass a written examination, with

1 exception; to provide for nonresident licensing; to require  
2 public adjusters to complete a minimum of 24 hours of  
3 continuing education on a biennial basis; to provide standards  
4 of conduct for public adjusters; to require public adjusters  
5 to report administrative action taken against them in other  
6 jurisdictions; to give the Commissioner of Insurance authority  
7 to promulgate rules necessary to administer and enforce this  
8 act; to authorize a delayed effective date for certain  
9 provisions; and to amend Section 27-4-2, Code of Alabama 1975,  
10 as amended by Act 2011-637, to provide license and application  
11 fees for public adjusters.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Purpose and Scope.

14 This act governs the qualifications and procedures  
15 for the licensing of public adjusters. It specifies the duties  
16 of and restrictions on public adjusters, which include  
17 limiting their licensure to assisting insureds in first party  
18 claims. It is the intent of the Legislature in enacting this  
19 act to make the law in this state similar to the Public  
20 Adjuster Licensing Model Act developed by the National  
21 Conference of Insurance Commissioners.

22 Section 2. Definitions.

23 For purposes of this act, the following terms shall  
24 have the meanings respectively ascribed to them by this  
25 section:

1           (1) BUSINESS ENTITY. A corporation, association,  
2 partnership, limited liability company, limited liability  
3 partnership or other legal entity.

4           (2) COMMISSIONER. The Alabama Commissioner of  
5 Insurance.

6           (3) HOME STATE. The District of Columbia and any  
7 state or territory of the United States in which a public  
8 adjuster maintains his, her or its principal place of  
9 residence or business and is licensed to act as a resident  
10 public adjuster. If the resident jurisdiction does not license  
11 public adjusters, the public adjuster shall designate as the  
12 adjuster's home state any state in which the public adjuster  
13 is licensed and in good standing.

14           (4) INDIVIDUAL. A natural person.

15           (5) NAIC. The National Association of Insurance  
16 Commissioners, its subsidiaries and affiliates, and any  
17 successor thereof.

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

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

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

24           (9) UNIFORM INDIVIDUAL APPLICATION. The versions of  
25 the NAIC Uniform Individual Application for a license and for  
26 renewal or continuation of a license current as of the time of  
27 use.

1 (10) UNIFORM BUSINESS ENTITY APPLICATION. The  
2 versions of the NAIC Uniform Business Entity Application for a  
3 license and for renewal or continuation of a license current  
4 as of the time of use.

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

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

9 (1) Solely in relation to first party claims arising  
10 under insurance contracts that insure the real or personal  
11 property of the insured, acts on behalf of or aids an insured  
12 to ascertain the amount of the damage or loss made the subject  
13 of a claim for damage or loss covered by an insurance  
14 contract, to assist in preparation and submission of the claim  
15 to an insurer, and to effect settlement of the claim by  
16 communication with an insurer or insurer's independent or  
17 company adjuster concerning any competing damage or loss  
18 valuations in those circumstances which do not rise to the  
19 level of a defaulted, controverted, or disputed claim or  
20 demand.

21 (2) Advertises for employment as a public adjuster  
22 of insurance claims or solicits business or represents himself  
23 or herself to the public as a public adjuster of first party  
24 insurance claims for losses or damages arising out of policies  
25 of insurance that insure real or personal property.

26 (3) Directly or indirectly solicits business,  
27 investigates or adjusts losses, advises an insured about

1 first-party claims for losses or damages arising out of  
2 policies of insurance that insure real or personal property  
3 for another person, or engages in the business of adjusting  
4 losses or damages covered by an insurance policy for the  
5 insured.

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

7 (1) Attorneys-at-law admitted to practice in this  
8 state when acting in their professional capacity as an  
9 attorney.

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

13 (3) A person employed only for the purpose of  
14 obtaining facts surrounding a loss or furnishing technical  
15 assistance to a licensed public adjuster, including  
16 photographers, estimators, private investigators, engineers  
17 and handwriting experts.

18 (4) A licensed health care provider, or employee of  
19 a licensed health care provider, who prepares or files a  
20 health claim form on behalf of a patient.

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

23 (c) Nothing in this act shall be construed as  
24 permitting a public adjuster to give legal advice or to  
25 otherwise engage in activity constituting the practice of law,  
26 or to act on behalf of or aid any person in negotiating or

1 settling a claim relating to bodily injury, death, or  
2 noneconomic damages.

3 Section 4. License required.

4 (a) A person shall not act or hold the person out as  
5 a public adjuster in this state unless the person is licensed  
6 as a public adjuster in accordance with this act.

7 (b) A business entity licensed as a public adjuster  
8 shall only designate licensed individual public adjusters to  
9 exercise the business entity's license.

10 Section 5. Application for license.

11 (a) The commissioner may contract with  
12 non-governmental entities, including the NAIC, to perform any  
13 ministerial functions, including the collection of fees and  
14 data, related to licensing that the commissioner may deem  
15 appropriate. The commissioner may require that license  
16 applications, license renewal applications, and supporting  
17 documentation be filed and all required fees and charges be  
18 paid electronically through systems operated or maintained by  
19 the non-governmental entities.

20 (b) An individual applying for a resident public  
21 adjuster license shall apply to the commissioner on the  
22 appropriate NAIC Uniform Individual Application and declare  
23 under penalty of suspension, revocation or refusal of the  
24 license that the statements made in the application are true,  
25 correct and complete to the best of the individual's knowledge  
26 and belief. Before approving the application, the commissioner  
27 shall find that the individual:

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

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

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

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

8 (5) Has successfully passed the public adjuster  
9 examination.

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

12 (c) No resident of another state or of the District  
13 of Columbia may be licensed pursuant to this section or may  
14 designate Alabama as his or her home state unless the person  
15 has successfully passed the public adjuster examination and  
16 has otherwise complied with the other applicable portions of  
17 this section.

18 (d) A business entity applying for a resident public  
19 adjuster license shall apply to the commissioner on the  
20 appropriate NAIC Uniform Business Entity Application and  
21 declare under penalty of suspension, revocation or refusal of  
22 the license that the statements made in the application are  
23 true, correct and complete to the best of the business  
24 entity's knowledge and belief. Before approving the  
25 application, the commissioner shall find that the business  
26 entity:



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

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

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

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

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

15          (d) Before issuing a public adjuster license to an  
16 applicant under this section, the commissioner shall also find  
17 that the applicant:

18           (1) Is financially responsible to exercise the  
19 license and has provided proof of financial responsibility as  
20 required in Section 11.

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

25          (e) The commissioner may require any documents  
26 reasonably necessary to verify the information contained in  
27 the application.

1                   Section 6. License; license renewal; name or address  
2 change.

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

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

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

22                   (d) After the first 30 days following the date a  
23 public adjuster license expires but within 12 months after the  
24 expiration date, the license may be reinstated effective as of  
25 the reinstatement by submitting a renewal application, by  
26 paying a fee of double the renewal fee required in Section  
27 27-4-2, Code of Alabama 1975, and by meeting the other

1 requirements for renewal including any applicable continuing  
2 education requirements.

3 (e) After a public adjuster license has been expired  
4 12 months, the person must reapply pursuant to Section 5 to  
5 again become licensed.

6 (f) A public adjuster who is unable to comply with  
7 license renewal procedures and requirements due to military  
8 service, long-term medical disability or some other  
9 extenuating circumstance may request a waiver of same and a  
10 waiver of any examination requirement, fine or other sanction  
11 imposed for failure to comply with renewal procedures.

12 (g) The license shall contain the licensee's name,  
13 address, personal identification number, the date of issuance  
14 and expiration, and any other information the commissioner  
15 deems necessary.

16 (h) The public adjuster shall inform the  
17 commissioner of a change in legal name or address within 30  
18 days of the change in a manner prescribed by the commissioner.  
19 Failure to timely inform the commissioner of a change in legal  
20 name or address shall result in a penalty of fifty dollars  
21 (\$50). If the penalty is not paid within 30 days after notice  
22 of the penalty assessment, the license shall be suspended  
23 until the penalty is paid.

#### 24 Section 7. Prelicensing course and examination.

25 (a) (1) Every individual subject to the examination  
26 required in subsection (b) must first complete a prelicensing

1 course consisting of 20 classroom hours, or equivalent  
2 individual instruction.

3 (2) The prelicensing course must have been completed  
4 within 12 months before the date of the examination as shown  
5 on the certificate furnished by the prelicensing course  
6 provider.

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

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

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

21 (2) The examination shall test the knowledge of the  
22 individual concerning property insurance, the duties and  
23 responsibilities of a public adjuster, and the insurance laws  
24 and regulations of this state. The examination required by  
25 this section shall be developed and conducted under rules and  
26 regulations prescribed by the commissioner.

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

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

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

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

24           Section 8. Exemptions from examination.

25          (a) An individual applicant for a public adjuster  
26 license in this state shall not be required to complete any  
27 prelicensing course or examination if the person is currently

1 licensed in another state as a public adjuster based on a  
2 public adjuster examination or if such state license has  
3 expired and the application is received by this state within  
4 90 days of expiration. The applicant must either provide  
5 certification from the other state that the applicant's  
6 license is currently in good standing or was in good standing  
7 at the time of expiration or the state's producer database  
8 records maintained by the NAIC must indicate that the  
9 applicant is or was licensed in good standing.

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

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

24 Section 9. Nonresident license.

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

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

4           (2) The person has applied for a license and has  
5 paid the fees required by Section 27-4-2, Code of Alabama  
6 1975.

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

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

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

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

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

6 Section 10. License denial, non-renewal, or  
7 revocation.

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

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

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

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

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

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

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

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

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

22           (d) In the absence of a greater fine specifically  
23 provided elsewhere in Title 27 of the Code of Alabama 1975,  
24 and in addition to or in lieu of any applicable probation,  
25 suspension, revocation or refusal, a person, in the sole  
26 discretion of the commissioner after a hearing, may be subject

1 additionally to a civil fine in an amount not to exceed ten  
2 thousand dollars (\$10,000) per violation.

3 (e) The commissioner shall retain the authority to  
4 enforce the provisions of and impose any penalty or remedy  
5 authorized by this act or elsewhere in Title 27 of the Code of  
6 Alabama 1975, against any person who is under investigation  
7 for or charged with a violation of this act or Title 27 even  
8 if the person's license or registration has been surrendered  
9 or has lapsed by operation of law.

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

16 Section 11. Bond or letter of credit.

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

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

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

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

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

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

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

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

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

24           (d) The issuer of the evidence of financial  
25 responsibility shall notify the commissioner upon termination  
26 of the bond or letter of credit, unless otherwise directed by  
27 the commissioner.

1 (e) The commissioner may ask for the evidence of  
2 financial responsibility at any time the commissioner deems  
3 relevant.

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

7 Section 12. Continuing education.

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

15 (b) This section shall not apply to:

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

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

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

1 (d) The commissioner shall prescribe the number of  
2 hours of continuing education credit for each continuing  
3 education course approved. Continuing education courses  
4 submitted in accordance with a reciprocal agreement the  
5 commissioner enters with other states shall be approved  
6 according to the provisions of the reciprocal agreement.

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

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

15 Section 13. Public adjuster fees.

16 (a) A public adjuster shall not pay a commission,  
17 service fee, or other valuable consideration to a person for  
18 investigating or settling claims in this state if that person  
19 is required to be licensed under this act and is not so  
20 licensed.

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

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

1 (d) In the event of a state of emergency, no public  
2 adjuster shall charge or agree to or accept as compensation or  
3 reimbursement any payment, commission, fee, or other thing of  
4 value equal to more than 10 percent of any insurance  
5 settlement or proceeds for claims resulting from the state of  
6 emergency.

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

10 Section 14. Contract between public adjuster and  
11 insured.

12 (a) Public adjusters shall ensure that all contracts  
13 for their services are in writing and contain all of the  
14 following terms:

15 (1) Legible full name of the adjuster signing the  
16 contract, as specified in Department of Insurance records.

17 (2) Permanent home state business address and phone  
18 number.

19 (3) Department of Insurance license number.

20 (4) Title of "Public Adjuster Contract."

21 (5) The insured's full name, street address,  
22 insurance company name and policy number, if known or upon  
23 notification.

24 (6) A description of the loss and its location, if  
25 applicable.

26 (7) Description of services to be provided to the  
27 insured.

1 (8) Signatures of the public adjuster and the  
2 insured.

3 (9) Date contract was signed by the public adjuster  
4 and date the contract was signed by the insured.

5 (10) Attestation language stating that the public  
6 adjuster is fully bonded pursuant to state law.

7 (11) Full salary, fee, commission, compensation or  
8 other considerations the public adjuster is to receive for  
9 services.

10 (b) (1) The contract may specify that the public  
11 adjuster shall be named as a co-payee on an insurer's payment  
12 of a claim.

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

15 (3) Initial expenses to be reimbursed to the public  
16 adjuster from the proceeds of the claim payment shall be  
17 specified by type, with dollar estimates set forth in the  
18 contract and with any additional expenses first approved by  
19 the insured.

20 (4) Compensation provisions in a public adjusting  
21 contract shall not be redacted in any copy of the contract  
22 provided to the commissioner. Such a redaction shall  
23 constitute an omission of a material fact is hereby declared a  
24 deceptive act in violation of Chapter 12 of Title 27, Code of  
25 Alabama 1975.

26 (c) The contract shall provide that the insured has  
27 the right to cancel the contract without penalty or obligation



1 within three business days after the date the contract was  
2 signed, provided that during any state of emergency declared  
3 under Section 31-9-8, Code of Alabama 1975, and for a period  
4 of one year after the date of the loss, the insured shall have  
5 five business days after the date on which the contract is  
6 executed to cancel the contract. The contract may provide that  
7 notice of cancellation be in writing and sent to the public  
8 adjuster by certified mail, return receipt requested, or other  
9 form of mailing which provides proof of delivery, at the  
10 address in the contract within the cancellation period. The  
11 contract shall provide that if the insured exercises the right  
12 to cancel the contract, anything of value given by the insured  
13 under the contract will be returned to the insured within 15  
14 business days following the receipt by the public adjuster of  
15 the cancellation notice.

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

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

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

25 (3) Be entitled only to reasonable compensation from  
26 the insured for services provided by the public adjuster on  
27 behalf of the insured, based on the time spent on a claim and

1 expenses incurred by the public adjuster, until the claim is  
2 paid or the insured receives a written commitment to pay from  
3 the insurer.

4 (e) A public adjuster shall provide the insured a  
5 written disclosure concerning any direct or indirect financial  
6 interest that the public adjuster has with any other party who  
7 is involved in any aspect of the claim, other than the salary,  
8 fee, commission or other consideration established in the  
9 written contract with the insured, including but not limited  
10 to any ownership of, other than as a minority stockholder, or  
11 any compensation expected to be received from, any  
12 construction firm, salvage firm, building appraisal firm,  
13 motor vehicle repair shop, or any other firm which that  
14 provides estimates for work, or that performs any work, in  
15 conjunction with damages caused by the insured loss on which  
16 the public adjuster is engaged. The word "firm" shall include  
17 any corporation, partnership, association, joint-stock  
18 company, or person.

19 (f) A public adjuster contract may not contain any  
20 contract term that:

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

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

4           (3) Imposes collection costs or late fees.

5           (4) Precludes an insured from pursuing civil  
6 remedies.

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

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

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

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

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

1 contract agreeing to pay them a fee or commission based on a  
2 percentage of the settlement, or other method of compensation.

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

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

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

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

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

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

23 (i) The public adjuster shall provide the insurer a  
24 notification letter, which has been signed by the insured,  
25 authorizing the public adjuster to represent the insured's  
26 interest.

27 Section 15. Escrow or trust accounts.

1           A public adjuster who receives, accepts, or holds  
2 any funds on behalf of an insured towards the settlement of a  
3 claim for loss or damage shall deposit the funds in a  
4 non-interest bearing escrow or trust account in a financial  
5 institution that is insured by an agency of the federal  
6 government in the public adjuster's home state or where the  
7 loss occurred.

8           Section 16. Record retention.

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

12           (1) Name of the insured.

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

14           (3) Copy of the contract between the public adjuster  
15 and insured.

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

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

19           (6) Itemized statement of all compensation received  
20 by the public adjuster, from any source whatsoever, in  
21 connection with the loss.

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

1 (8) Name of the public adjuster who executed the  
2 contract.

3 (9) Name of the attorney representing the insured,  
4 if applicable, and the name of the claims representatives of  
5 the insurance company.

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

8 (b) Records shall be maintained for at least five  
9 years after the termination of the transaction with an insured  
10 and shall be open to examination by the commissioner at all  
11 times.

12 (c) Records submitted to the commissioner in  
13 accordance with this section that contain information  
14 identified in writing as proprietary by the public adjuster  
15 shall be treated as confidential by the commissioner and shall  
16 not be subject to any open record laws of this state.

17 Section 17. Standards of conduct of public adjuster.

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

25 (b) A public adjuster shall not misrepresent to a  
26 claimant that the adjuster is an adjuster representing an  
27 insurer in any capacity, including acting as an employee of

1 the insurer or acting as an independent adjuster unless so  
2 appointed by an insurer in writing to act on the insurer's  
3 behalf for that specific claim or purpose. A licensed public  
4 adjuster is prohibited from charging that specific claimant a  
5 fee when appointed by the insurer and the appointment is  
6 accepted by the public adjuster.

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

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

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

19 (f) A public adjuster shall not acquire any interest  
20 in salvage of property subject to the contract with the  
21 insured unless the public adjuster obtains written permission  
22 from the insured after settlement of the claim with the  
23 insurer as set forth in subsection (h).

24 (g) A public adjuster shall abstain from referring  
25 or directing the insured to get needed repairs or services in  
26 connection with a loss from any person, unless disclosed to  
27 the insured:

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

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

5           (h) A public adjuster shall disclose to an insured  
6 if the adjuster has any interest in or will be compensated by  
7 any construction firm, salvage firm, building appraisal firm,  
8 motor vehicle repair shop, or any other firm that performs any  
9 work in conjunction with damages caused by the insured loss.  
10 The word "firm" shall include any corporation, partnership,  
11 association, joint-stock company or individual.

12           (i) Any compensation or anything of value in  
13 connection with an insured's specific loss that will be  
14 received by a public adjuster shall be disclosed by the public  
15 adjuster to the insured in writing including the source and  
16 amount of the compensation.

17           (j) A public adjuster shall not give or offer to  
18 give a monetary loan or advance to a client or prospective  
19 client.

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

26           (1) Public adjusters shall adhere to the following  
27 general ethical requirements:



1           (1) A public adjuster shall not undertake the  
2 adjustment of any claim if the public adjuster is not  
3 competent and knowledgeable as to the terms and conditions of  
4 the insurance coverage, or which otherwise exceeds the public  
5 adjuster's current expertise.

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

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

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

17           (5) A public adjuster shall not enter into a  
18 contract or accept a power of attorney that vests in the  
19 public adjuster the effective authority to choose the persons  
20 who shall perform repair work.

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

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

1 (n) A public adjuster who is not actively licensed  
2 as an attorney in this state shall not give legal advice or  
3 otherwise engage in activities which are the practice of law.

4 Section 18. Reporting of actions.

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

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

18 Section 19. Fingerprints.

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

26 (b) The commissioner is authorized to require a  
27 criminal history record check on each applicant in accordance

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

9 (1) All executive officers and directors of the  
10 applicant.

11 (2) Any individual owning, directly or indirectly,  
12 51 percent or more of the outstanding voting securities of the  
13 applicant.

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

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

24 (d) The commissioner may waive submission of  
25 fingerprints by any person who has previously furnished  
26 fingerprints and those fingerprints are on file with the  
27 centralized repository of the NAIC.

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

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

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

24 Section 20. Rules.

25 (a) The commissioner may promulgate reasonable rules  
26 as are necessary or proper to carry out the purposes of this

1 act in accordance with Chapter 2 of Title 27, Code of Alabama  
2 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. Civil actions; liability.

9 The commissioner, the Attorney General, the district  
10 attorney of a county within which an alleged violation has  
11 occurred, or any person may bring a civil action against a  
12 person or business entity violating this act in the  
13 appropriate court in the county where the alleged violator  
14 resides or where the principal place of business of the  
15 alleged violator is located or in the county where the alleged  
16 violation occurred. Upon a proper showing of a violation, the  
17 court may temporarily, preliminarily, or permanently enjoin  
18 the defendant from violations of this act and award any other  
19 legal or equitable relief, including actual damages and  
20 punitive damages, as may be appropriate in light of the nature  
21 of the violation.

22 Section 22. Section 27-4-2, Code of Alabama 1975, as  
23 amended by Act 2011-637, is amended to read as follows:

24 "§27-4-2.

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

27 "(1) Certificate of authority:

1            "a. Initial application for original certificate of  
2 authority, including the filing with the commissioner of all  
3 documents incidental thereto ..... \$500

4            "b. Issuance of original certificate of authority  
5 ..... 500

6            "c. Annual continuation or renewal fee ..... 500

7            "d. Reinstatement fee ..... 500

8            "(2) Charter documents, filing with the commissioner  
9 amendment to articles of incorporation or of association, or  
10 of other charter documents or to bylaws ..... 25

11            "(3) Solicitation permit, filing application and  
12 issuance ..... 250

13            "(4) Annual statement of insurer, except when filed  
14 as part of application for original certificate of authority,  
15 filing ..... 25

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

17            "a. Individuals:

18            "1. Application fee (For filing of initial  
19 application for license) ..... 20

20            "2. License fee (For issuance of original license)  
21 ..... 40

22            "b. Business entities:

23            "1. Application fee (For filing of initial  
24 application for license) ..... 20

25            "2. License fee (For original license and each  
26 biennial renewal) ..... 100

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

3                    "(6) Producer appointment fee:

4                    "a. Filing notice of appointment        ..... 30

5                    "b. Annual continuation of appointment        ..... 10

6                    "(7) Reinsurance intermediary license:

7                    "a. Filing application for license        ..... 30

8                    "b. Issuance of initial license        ..... 140

9                    "c. Annual continuation of license        ..... 100

10                    "(8) Managing general agent license:

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

13                    "b. Issuance of initial license, each insurer        .....

14 125

15                    "c. Annual continuation of license, each insurer  
16 ..... 75

17                    "(9) Service representative's license:

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

20                    "b. Appointment fee, property and casualty, each  
21 insurer (For original appointment and each annual renewal)  
22 ..... 30

23                    "(10) Surplus line broker:

24                    "a. Application fee (For filing of initial  
25 application for license)        ..... 20

26                    "b. License fee (For original license and each  
27 annual renewal):

1           "1. Individual licensees   ..... 200  
2           "2. Business entity licensees ..... 500  
3           "(11) Adjusters (independent and public; resident or  
4 nonresident):  
5           "a. Application fee (For filing of initial  
6 application for license; individuals and business entities)  
7 ..... 20  
8           "b. License fee (For original license and each  
9 biennial continuation)  
10          "1. Individual licensees ..... 80  
11          "2. Business entity licensees ..... 200  
12          "c. Examination fee, an amount set by the  
13 commissioner not to exceed ..... 100  
14          "(12) Miscellaneous services:  
15          "a. For copies of documents, records on file in  
16 Insurance Department, per page ..... 1  
17          "b. For each certificate under seal of the  
18 commissioner, other than licenses ..... 5  
19          "(13) The commissioner shall collect a fee of fifty  
20 dollars (\$50) when, in acting as agent for service of process  
21 for any insurance company, fraternal benefit society, mutual  
22 aid association, nonresident producer, nonresident independent  
23 or public adjuster, or nonresident surplus line broker, he or  
24 she accepts the service of legal process as provided by the  
25 laws of this state. The commissioner shall refuse to receive  
26 and file or serve any process unless the process is



1 accompanied by the aforementioned fee, which shall be taxed as  
2 costs in the action.

3 "(b) The fees and licenses specified in subsection  
4 (a) shall be deposited in the State Treasury with 50 percent  
5 credited to the General Fund and 50 percent credited to the  
6 Insurance Department Fund."

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