

1 AN ACT

2 RELATING TO INSURANCE; DEFINING "PUBLIC ADJUSTER" AND CERTAIN
3 OTHER TERMS; REMOVING REFERENCES TO TEMPORARY LICENSES;
4 ELIMINATING THE ISSUANCE OF TEMPORARY ADJUSTER LICENSES;
5 ALLOWING INSURERS AND PUBLIC ADJUSTERS TO REQUEST PERMISSION
6 IN AN EMERGENCY TO USE ADJUSTERS LICENSED IN ANOTHER STATE;
7 PERMITTING THE SUPERINTENDENT OF INSURANCE TO ALLOW ADJUSTERS
8 TO OBTAIN CONTINUING EDUCATION THROUGH INSTRUCTION PROVIDED
9 ONLINE OR THROUGH THE MAIL REGARDLESS OF WHERE THE ADJUSTER
10 IS LOCATED; PROHIBITING ADJUSTERS WHO ARE CONTRACTORS FROM
11 ADJUSTING CLAIMS; PROVIDING STANDARDS OF CONDUCT FOR PUBLIC
12 ADJUSTERS; IMPOSING REQUIREMENTS ON CONTRACTS BETWEEN PUBLIC
13 ADJUSTERS AND INSURED; REQUIRING PUBLIC ADJUSTERS TO DEPOSIT
14 FUNDS RECEIVED FOR INSURED IN ESCROW OR TRUST ACCOUNTS;
15 IMPOSING REQUIREMENTS ON THE RECORDS THAT PUBLIC ADJUSTERS
16 MUST MAINTAIN; ALLOWING THE SUPERINTENDENT OF INSURANCE TO
17 REVIEW REPORTS OF INSURANCE FRAUD SUBMITTED BY PUBLIC
18 ADJUSTERS.

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

23 "59A-13-2. DEFINITIONS.--

24 A. For the purposes of Chapter 59A, Article 13
25 NMSA 1978:

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

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

9 (b) advises the insured of the
10 insured's rights to settlement and the insured's rights to
11 settle, arbitrate and litigate the dispute;

12 (2) "automated claims adjudication system"
13 means a preprogrammed computer system designed for the
14 collection, data entry, calculation and final resolution of
15 portable electronics insurance claims that shall:

16 (a) only be used by a licensed
17 independent adjuster, licensed agent or supervised
18 individuals operating pursuant to Subsection C of Section
19 59A-13-3 NMSA 1978;

20 (b) comply with all claims payment
21 requirements of the Insurance Code; and

22 (c) be certified as compliant with the
23 Portable Electronics Insurance Act by a licensed independent
24 adjuster who is an officer of a licensed business entity
25 pursuant to the Insurance Code;

1 (3) "business entity" means a corporation,
2 association, partnership, limited liability company, limited
3 liability partnership or other legal entity;

4 (4) "home state" means the District of
5 Columbia and any state or territory of the United States in
6 which the adjuster's principal place of residence or
7 principal place of business is located. If neither the state
8 in which the adjuster maintains the principal place of
9 residence nor the state in which the adjuster maintains the
10 principal place of business has substantially similar laws
11 governing adjusters, the adjuster may declare another state
12 in which it becomes licensed and acts as an adjuster to be
13 the home state;

14 (5) "independent adjuster" means an adjuster
15 who is not a staff adjuster or a public adjuster and includes
16 a representative and an employee of an independent adjuster;

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

23 (7) "resident adjuster" means an adjuster
24 who resides principally in New Mexico and who conducts
25 business primarily in New Mexico; and

1 (8) "staff adjuster" means an adjuster
2 individual who is a salaried employee of an insurer or
3 affiliate of the employer insurer, representing and adjusting
4 claims solely under the authority of the employer insurer.

5 B. Except as otherwise provided, "adjuster" does
6 not include:

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

10 (2) a licensed agent or general agent of an
11 authorized insurer or an employee of an agent or general
12 agent who adjusts claims or losses under specific authority
13 from the insurer and solely under policies issued by the
14 insurer;

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

19 (4) a salaried or part-time claims agent or
20 investigator employed by a self-insured person;

21 (5) an individual who, for purposes of
22 portable electronics insurance claims, collects claim
23 information from, or furnishes claim information to, insureds
24 or claimants, and who conducts data entry, including entering
25 data into an automated claims adjudication system; provided

1 that the individual is an employee of a licensed independent
2 adjuster or its affiliate where no more than twenty-five such
3 persons are under the supervision of one licensed independent
4 adjuster or licensed agent who is exempt from licensure
5 pursuant to Paragraph (2) of this subsection;

6 (6) a property damage appraiser or other
7 individual who is employed by an insurer, third-party
8 administrator, independent adjuster or self-insurer who
9 inspects and provides monetary estimates of damages sustained
10 by an insured or third party and does not investigate,
11 negotiate, settle or adjust claims;

12 (7) a person who is employed solely for the
13 purpose of obtaining facts surrounding a loss or furnishing
14 technical assistance to an adjuster, such as a photographer,
15 estimator, private investigator, engineer or handwriting
16 expert;

17 (8) a licensed health care provider or
18 employee of a licensed health care provider who prepares or
19 files a health claim on behalf of a patient;

20 (9) a person who settles subrogation claims
21 between insurers;

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

25 (11) an employee of an insurer who receives

1 loss reports from insureds and who may advise an insured
2 regarding the claim process or coverage available to the
3 insured but who does not act as an adjuster on the claim."

4 SECTION 2. Section 59A-13-3.1 NMSA 1978 (being Laws
5 2016, Chapter 89, Section 55) is amended to read:

6 "59A-13-3.1. EXAMINATION FOR LICENSE.--

7 A. An individual applying for a license as an
8 adjuster shall, prior to issuance of a license, personally
9 take and pass a written examination. The examination shall
10 test the knowledge of the individual concerning the duties
11 and responsibilities of an adjuster and the insurance laws
12 and rules of this state. Examinations required by this
13 section shall be developed and conducted under rules
14 prescribed by the superintendent.

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

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

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

25 E. No examination shall be required:

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

4 (2) if the applicant took and passed a
5 similar examination in a state in which the applicant is
6 already licensed, subject to Section 59A-5-33 NMSA 1978."

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

9 "59A-13-4. QUALIFICATIONS FOR LICENSE AS ADJUSTER.--

10 A. The superintendent shall license as an adjuster
11 only an individual who is otherwise in compliance with
12 Chapter 59A, Articles 11 and 13 NMSA 1978 and who has
13 furnished evidence satisfactory to the superintendent that
14 the applicant for license:

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

16 (2) is a bona fide resident of this state,
17 or of a state or country that permits residents of this state
18 to act as adjusters therein, except that under circumstances
19 of necessity the superintendent may waive the requirement of
20 reciprocity;

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

24 (4) has passed any examination required for
25 licensing; and

1 (5) has filed the bond required under
2 Section 59A-13-5 NMSA 1978.

3 B. Paragraphs (2) and (5) of Subsection A of this
4 section shall not apply as to staff adjusters.

5 C. Individuals holding licenses as adjusters on
6 the effective date of the Insurance Code shall be deemed to
7 meet the qualifications for the license except as provided in
8 Chapter 59A, Articles 11 and 13 NMSA 1978.

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

1 Chapter 127, Section 233) is amended to read:

2 "59A-13-5. BOND.--

3 A. With application for license as an adjuster
4 other than as staff adjuster, the applicant shall file with
5 the superintendent a surety bond in favor of the
6 superintendent in aggregate amount of not less than ten
7 thousand dollars (\$10,000), conditioned to pay actual damages
8 resulting to the state of New Mexico or any member of the
9 public in New Mexico from violation of law by the licensee
10 while acting as an adjuster. The bond shall be one executed
11 by an authorized surety insurer.

12 B. The bond shall remain in effect for the
13 duration of the license, or until the surety is released from
14 liability by the superintendent, or until canceled by the
15 surety. Without prejudice to any liability accrued prior to
16 cancellation, the surety may cancel a bond by giving written
17 notice to the superintendent at least thirty days prior to
18 effective date of cancellation.

19 C. The applicant or licensee may file with the
20 superintendent a cash bond in like amount, in lieu of surety
21 bond."

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

24 "59A-13-6. EMERGENCY ADJUSTERS.--

25 A. In the event of an emergency requiring the

1 immediate expansion of adjuster services in New Mexico, an
2 insurer or a public adjuster licensed in New Mexico may
3 request authority from the superintendent to employ adjusters
4 to assist with the emergency who are not licensed in New
5 Mexico but who have fulfilled all licensing requirements in
6 their home state and are in good standing in their home
7 state. An insurer or public adjuster requesting such
8 authority shall provide the superintendent with the following
9 information:

10 (1) the nature of the emergency and the
11 affected region of the state;

12 (2) a list of the adjusters that the insurer
13 or public adjuster shall use that are not licensed in
14 New Mexico. This list shall include each adjuster's name,
15 home address, last four digits of social security number,
16 national producer number, home state and the effective date
17 of the contract between the adjuster and the insurer or
18 public adjuster;

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

23 (4) any other information that the
24 superintendent may require.

25 B. The adjustment of claims by the adjusters

1 listed in Paragraph (2) of Subsection A of this section shall
2 be limited to claims arising from the emergency.

3 C. Use of the listed adjusters shall be limited to
4 the ninety days immediately following the emergency, unless
5 an extension of time is requested by the insurer or public
6 adjuster and granted by the superintendent.

7 D. A request by an insurer or public adjuster to
8 employ adjusters to assist with an emergency who are not
9 licensed in New Mexico but who are currently licensed and in
10 good standing in their home state shall be deemed approved if
11 such a request is not disapproved by the superintendent
12 within three business days of its submission to the
13 superintendent.

14 E. An insurer or public adjuster that requests
15 authorization pursuant to this section may commence employing
16 the adjusters listed in Paragraph (2) of Subsection A of this
17 section while awaiting the superintendent's decision on their
18 request."

19 SECTION 6. Section 59A-13-12 NMSA 1978 (being Laws
20 2016, Chapter 89, Section 56) is amended to read:

21 "59A-13-12. CONTINUING EDUCATION.--

22 A. The superintendent shall require as a condition
23 to continuation of an adjuster license that during the
24 twenty-four months next preceding expiration of the current
25 license period, the licensee has attended the minimum number

1 of hours of formal class instruction, lectures or seminars
2 required and approved by the superintendent.

3 B. Instruction shall be designed to refresh the
4 licensee's understanding of basic principles and coverages
5 involved, recent and prospective changes, applicable laws and
6 rules of the superintendent, proper conduct of the licensee's
7 business and duties and responsibilities of the licensee.

8 C. The superintendent may permit licensees to
9 successfully complete an equivalent course of study and
10 instruction online or by mail.

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

14 E. The superintendent shall charge, at the time of
15 certifying each licensee's continuing education credits as a
16 condition of continuation of license, a fee of one dollar
17 (\$1.00) per credit hour of continuing education; provided
18 that the superintendent may contract with an independent
19 agency to receive and review a continuing education
20 compliance report, and in such a case, the fee shall be a
21 reasonable amount fixed by the superintendent and payable to
22 the contracting agency."

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

25 "PROHIBITED CONDUCT REGARDING THE ADJUSTMENT AND REPAIR

1 OF PROPERTY DAMAGE.--

2 A. An adjuster may not adjust a loss related to
3 physical damage of a property on which the adjuster is also a
4 contractor, acts as a contractor or is employed as a
5 contractor, including a roofing contractor, building
6 contractor or plumbing contractor, or otherwise provides
7 building repairs or products, including building or plumbing
8 repairs or products, for compensation or is a controlling
9 person in a business relating to such contracting.

10 B. A contractor or a roofing contractor may not
11 act as an adjuster or advertise to adjust claims for any
12 property for which the contractor is providing or may provide
13 roofing, building, plumbing or other contractor services,
14 regardless of whether the contractor is a licensed adjuster.

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

25 SECTION 8. A new section of Chapter 59A, Article 13

1 NMSA 1978 is enacted to read:

2 "STANDARDS OF CONDUCT.--

3 A. All adjusters shall adhere to the following
4 standards of conduct:

5 (1) an adjuster shall not permit an
6 unlicensed employee or representative of the adjuster to
7 conduct business for which a license is required pursuant to
8 the Insurance Code;

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

14 (3) an adjuster shall not undertake the
15 adjustment of any claim if the adjuster is not competent and
16 knowledgeable as to the terms and conditions of the insurance
17 coverage, or which otherwise exceeds the adjuster's current
18 experience;

19 (4) an adjuster shall not have a direct or
20 indirect financial interest in any aspect of the claim, other
21 than the salary, fee, commission or other consideration
22 established in a written contract; unless, in the case of a
23 public adjuster, full written disclosure has been made to the
24 insured as set forth in Subsection G of Section 9 of this
25 2017 act;

1 (5) an adjuster shall not acquire any
2 interest in salvage of property subject to adjustment;
3 unless, in the case of a public adjuster, written permission
4 is obtained from the insured; and

5 (6) an adjuster shall disclose to an insured
6 if the adjuster has any interest or will be compensated by
7 any construction firm, salvage firm, building appraisal firm,
8 motor vehicle repair shop or any other business entity that
9 performs any work in conjunction with damages caused by the
10 insured loss.

11 B. Public adjusters shall also adhere to the
12 following standards of conduct:

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

20 (2) a public adjuster shall not solicit, or
21 attempt to solicit, an insured during the progress of a
22 loss-producing occurrence, as defined in the insured's
23 insurance contract;

24 (3) the public adjuster shall abstain from
25 referring or directing the insured to get needed repairs or

1 services in connection with a loss from any person, unless
2 disclosed to the insured:

3 (a) with whom the public adjuster has a
4 financial interest; or

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

7 (4) any compensation or anything of value in
8 connection with an insured's specific loss that will be
9 received by a public adjuster shall be disclosed by the
10 public adjuster to the insured in writing, including the
11 source and amount of any such compensation;

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

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

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

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

23 C. A person shall not accept a commission, service
24 fee or other valuable consideration for investigating or
25 settling claims in New Mexico if that person is required to

1 be licensed under the Insurance Code and is not so licensed."

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

4 "CONTRACT BETWEEN PUBLIC ADJUSTER AND INSURED.--

5 A. Public adjusters shall ensure that all
6 contracts for their service are in writing and contain the
7 following terms:

8 (1) legible full name of the adjuster
9 signing the contract, as specified in the office of
10 superintendent of insurance records;

11 (2) permanent home state business name and
12 phone number;

13 (3) office of superintendent of insurance
14 license number;

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

16 (5) the insured's full name, street address,
17 insurance company name and policy number, if known or upon
18 notification;

19 (6) description of the loss and its
20 location, if applicable;

21 (7) description of services to be provided
22 to the insured;

23 (8) signatures of the public adjuster and
24 the insured;

25 (9) date the contract was signed by the

1 public adjuster and date the contract was signed by the
2 insured;

3 (10) attestation language stating that the
4 public adjuster is fully bonded; and

5 (11) full salary, fee, commission,
6 compensation or other considerations the public adjuster is
7 to receive for services.

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

11 C. If the compensation is based on a share of the
12 insurance settlement, the exact percentage shall be
13 specified.

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

19 E. Compensation provisions in the public adjusting
20 contract shall not be redacted in any copy of the contract
21 provided to the superintendent.

22 F. If the insurer, not later than seventy-two
23 hours after the date on which the loss is reported to the
24 insurer, either pays or commits in writing to pay to the
25 insured the policy limit of the insurance policy, the public

1 adjuster shall:

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

5 (2) not receive a commission consisting of a
6 percentage of the total amount paid by an insurer to resolve
7 the claim; and

8 (3) be entitled only to reasonable
9 compensation from the insured for the time spent and expenses
10 incurred on the claim by the public adjuster, until the claim
11 is paid or the insured receives a written commitment to pay
12 from the insurer.

13 G. A public adjuster shall provide the insured a
14 written disclosure concerning any direct or indirect
15 financial interest that the public adjuster has with any
16 party that is involved in any aspect of the claim, other than
17 the salary, fee, commission or other consideration
18 established in the written contract with the insured,
19 including any ownership of, other than as a minority
20 stockholder, or any compensation expected to be received
21 from, any construction firm, salvage firm, building appraisal
22 firm, motor vehicle repair shop or any other business entity
23 that provides estimates for work, or that performs any work,
24 in conjunction with damages caused by the insured loss on
25 which the public adjuster is engaged.

1 H. A public adjuster contract may not contain any
2 contract term that:

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

6 (2) allows a public adjuster to collect the
7 entire fee from the first check issued by an insurance
8 company, rather than as percentage of each check issued by an
9 insurance company;

10 (3) requires the insured to authorize an
11 insurance company to issue a check only in the name of the
12 public adjuster;

13 (4) imposes collection costs or late fees;
14 or

15 (5) precludes a public adjuster from
16 pursuing civil remedies.

17 I. Prior to the signing of the contract, the
18 public adjuster shall provide the insured with a separate
19 disclosure document regarding the claim process that states
20 the following:

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

23 (2) You must notify your insurance company
24 of your loss and submit a claim. The insurance company will
25 assign an adjuster to handle your claim. You may allow their

1 adjuster to handle your claim or you may hire a public
2 adjuster at your own expense.

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

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

11 (5) You have the right to contact your
12 attorney, your insurance company, your insurance company's
13 adjuster or attorney, or any other person regarding the
14 settlement of your claim.

15 (6) The public adjuster does not work for
16 your insurance company and is not paid by your insurance
17 company. You are solely responsible for paying the public
18 adjuster."

19 J. Subsection I of this section shall not apply to
20 a public adjuster providing public adjuster services on
21 behalf of a financial institution, a mortgage company or
22 other default servicer.

23 K. The contract shall be executed in duplicate to
24 provide an original contract to the public adjuster and an
25 original contract to the insured. The public adjuster's

1 original contract shall be available at all times for
2 inspection without notice by the superintendent.

3 L. The public adjuster shall provide the insurer
4 with a notification letter, which has been signed by the
5 insured, authorizing the public adjuster to represent the
6 insured's interest.

7 M. The insured has the right to rescind the
8 contract within three business days after the date the
9 contract was signed. The rescission shall be in writing and
10 mailed or delivered to the public adjuster at the address in
11 the contract within the three-business-day period.

12 N. If the insured exercises the right to rescind
13 the contract, anything of value given by the insured under
14 the contract will be returned to the insured within fifteen
15 business days following the receipt by the public adjuster of
16 the cancellation notice."

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

19 "ESCROW OR TRUST ACCOUNTS.--A public adjuster who
20 receives, accepts or holds any funds on behalf of an insured
21 toward the settlement of a claim for loss or damage shall
22 deposit the funds in a non-interest-bearing escrow or trust
23 account in a financial institution that is insured by an
24 agency of the federal government in the public adjuster's
25 home state or where the loss occurred."

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

3 "RECORDS OF PUBLIC ADJUSTER.--

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

7 (1) the name of the insured;

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

10 (3) a copy of the contract between the
11 public adjuster and the insured;

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

15 (5) an itemized statement of the insured's
16 recoveries;

17 (6) an itemized statement of all of the
18 compensation received by the public adjuster, from any source
19 whatsoever, in connection with the loss;

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

25 (8) the name of the public adjuster who

1 executed the contract; and

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

5 B. Records shall be maintained for at least five
6 years after the termination of the transaction with an
7 insured and shall be open to examination by the
8 superintendent at all times.

9 C. Records submitted to the superintendent
10 pursuant to this section that contain information identified
11 in writing as proprietary by the public adjuster and accepted
12 as confidential by the superintendent shall be treated as
13 confidential by the superintendent, shall not be subject to
14 the Inspection of Public Records Act, shall not be subject to
15 subpoena and shall not be subject to discovery or admissible
16 as evidence in any private civil action."

17 SECTION 12. Section 59A-16C-4 NMSA 1978 (being Laws
18 1998, Chapter 115, Section 4) is amended to read:

19 "59A-16C-4. SUPERINTENDENT'S DUTIES.--The
20 superintendent shall:

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

24 B. respond to notifications or complaints of
25 suspected insurance fraud generated by state and local police

1 or other law enforcement authorities and governmental units,
2 including the federal government and any other person;

3 C. review notices and reports of insurance fraud
4 submitted by authorized insurers, their employees, agents or
5 producers or by public adjusters and select those incidents
6 of alleged fraud that, in the superintendent's judgment,
7 require further investigation and conduct the investigations;

8 D. conduct independent investigations and
9 examinations of insurance transactions and alleged insurance
10 fraud, conduct studies to determine the extent of insurance
11 fraud, deceit or intentional misrepresentation of any kind in
12 the insurance process and publish information and reports on
13 the office of superintendent of insurance's examinations and
14 studies;

15 E. report incidents of alleged insurance fraud
16 supported by investigations and examinations to the
17 appropriate district attorney and any other appropriate law
18 enforcement, administrative, regulatory or licensing agency
19 and assemble evidence, prepare charges and otherwise assist
20 any prosecutorial authority having jurisdiction over
21 insurance fraud enforcement;

22 F. assist any official or agency of this state,
23 any other state or the federal government that requests
24 assistance in investigating insurance fraud;

25 G. maintain records and information in order to

1 produce an annual report of the superintendent's activities
2 undertaken in connection with carrying out the provisions of
3 the Insurance Fraud Act; and

4 H. conduct, in cooperation with the attorney
5 general and the department of public safety, public outreach
6 and awareness programs on the costs of insurance fraud to the
7 public and how members of the public can assist themselves,
8 the superintendent and law enforcement officials in preventing
9 and prosecuting insurance fraud." _____

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