

**SENATE BILL No. 105**

By Financial Institutions and Insurance

1-26

10 AN ACT enacting the public adjusters licensing act.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. This act shall be known and may be cited as the public  
14 adjusters licensing act, and it shall govern the qualifications and proce-  
15 dures for the licensing of public adjusters. It specifies the duties of and  
16 restrictions on public adjusters, which include limiting their licensure to  
17 assisting insureds in first party claims.

18 Sec. 2. As used in this act: (a) “Business entity” means a corporation,  
19 association, partnership, limited liability company, limited liability part-  
20 nership or other legal entity.

21 (b) “Catastrophic disaster” means, according to the federal response  
22 plan, an event:

23 (1) Declared by the president of the United States or governor of  
24 Kansas;

25 (2) results in large numbers of deaths and injuries;

26 (3) causes extensive damage or destruction of facilities that provide  
27 and sustain human needs;

28 (4) produces an overwhelming demand on state and local response  
29 resources and mechanisms;

30 (5) causes a severe long-term effect on general economic activity; and

31 (6) severely affects state, local and private sector capabilities to begin  
32 and sustain response activities.

33 (c) “Commissioner” means the state commissioner of insurance.

34 (d) “FBI” means the federal bureau of investigation.

35 (e) “Fingerprint” means an impression of the lines on a finger taken  
36 for purpose of identification. The impression may be electronic or in ink  
37 converted to electronic format.

38 (f) “Home state” means the District of Columbia and any state or  
39 territory of the United States in which a public adjuster’s principal place  
40 of residence or principal place of business is located. If neither the state  
41 in which the public adjuster maintains the principal place of residence  
42 nor the state in which the public adjuster maintains the principal place  
43 of business has a law governing public adjusters substantially similar to

- 1 this act, the public adjuster may declare another state in which it becomes  
2 licensed and acts as a public adjuster to be the home state.
- 3 (g) “KBI” means the Kansas bureau of investigation.
- 4 (h) “Licensed public adjuster” means a public adjuster licensed in  
5 accordance with this act.
- 6 (i) “NAIC” means the national association of insurance commission-  
7 ers and its affiliates and subsidiaries.
- 8 (j) “Person” means an individual or a business entity.
- 9 (k) “Public adjuster” means any individual who:
- 10 (1) For compensation or any other thing of value, and solely in rela-  
11 tion to first party claims arising under insurance claims or contracts that  
12 insure the real or personal property of the insured, aids or acts on behalf  
13 of an insured in negotiating for, or effecting the settlement of, a claim  
14 for loss or damage covered by and limited to commercial lines insurance  
15 contracts;
- 16 (2) advertises for employment as a public adjuster of insurance claims  
17 or directly or indirectly solicits business or represents to the public that  
18 such person is a public adjuster of first party insurance claims for losses  
19 or damages to real or personal property covered by and limited to com-  
20 mercial lines insurance contracts; or
- 21 (3) for compensation or any other thing of value, investigates or ad-  
22 justs losses or advises an insured about first party claims for losses or  
23 damages to real or personal property of the insured covered by and lim-  
24 ited to commercial lines insurance contracts, for another person engaged  
25 in the business of adjusting losses or damages covered by and limited to  
26 commercial lines insurance contracts.
- 27 (l) “Uniform individual application” means the current version of the  
28 NAIC uniform individual application for resident and nonresident  
29 individuals.
- 30 (m) “Uniform business entity application” means the current version  
31 of the NAIC uniform business entity application for resident and non-  
32 resident business entities.
- 33 Sec. 3. (a) A person shall not act as or represent that such person is  
34 a public adjuster in this state unless the person is an individual licensed  
35 as a public adjuster in accordance with this act.
- 36 (b) A licensed public adjuster shall not misrepresent to a claimant  
37 that the individual is an adjuster representing an insurer in any capacity,  
38 including acting as an employee of the insurer or acting as an independent  
39 adjuster, unless so appointed by an insurer in writing to act on the in-  
40 surer’s behalf for that specific claim or purpose. A licensed public adjuster  
41 is prohibited from charging that specific claimant a fee when appointed  
42 by the insurer and the appointment is accepted by the licensed public  
43 adjuster.

- 1 (c) Notwithstanding the provisions of this section, a license as a public  
2 adjuster shall not be required of the following:
- 3 (1) An attorney-at-law admitted to practice in this state, when acting  
4 in such person's professional capacity as an attorney;
- 5 (2) a person who negotiates or settles claims arising under a life or  
6 health insurance policy or an annuity contract;
- 7 (3) a person employed only for the purpose of obtaining facts sur-  
8 rounding a loss or furnishing technical assistance to a licensed public  
9 adjuster, including photographers, estimators, private investigators, en-  
10 gineers and handwriting experts;
- 11 (4) a licensed health care provider, or employee of a licensed health  
12 care provider, who prepares or files a health claim form on behalf of a  
13 patient; or
- 14 (5) a person who settles subrogation claims between insurers.
- 15 Sec. 4. (a) An individual applying for a public adjuster license shall  
16 make application to the commissioner on the appropriate uniform appli-  
17 cation or other application prescribed by the commissioner.
- 18 (b) The applicant shall declare under penalty of perjury and under  
19 penalty of refusal, suspension or revocation of the license, that the state-  
20 ments made in the application are true, correct and complete to the best  
21 of the applicant's knowledge and belief.
- 22 (c) In order to make a determination of license eligibility, the com-  
23 missioner shall require a criminal history record check on each applicant  
24 who is not exempt from pre-licensing examination pursuant to section 7,  
25 and amendments thereto.
- 26 Sec. 5. (a) Before issuing a public adjuster license to an applicant  
27 under this act, the commissioner shall find that the applicant:
- 28 (1) Is eligible to designate this state as the applicant's home state or  
29 is a nonresident who is not eligible for a license under section 8, and  
30 amendments thereto;
- 31 (2) has not committed any act that is a ground for denial, suspension  
32 or revocation of a license as set forth in section 10, and amendments  
33 thereto;
- 34 (3) is trustworthy, reliable and of good reputation, evidence of which  
35 may be determined by the commissioner;
- 36 (4) is financially responsible to exercise the rights and privileges un-  
37 der the license and has provided proof of financial responsibility as re-  
38 quired in section 11, and amendments thereto;
- 39 (5) has paid an application fee of \$100; and
- 40 (6) maintains an office in the home state with public access during  
41 regular business hours or by reasonable appointment.
- 42 (b) In addition to satisfying the requirements of subsection (a), an  
43 applicant shall

- 1 (1) Be at least 18 years of age; and  
2 (2) have successfully passed the public adjuster examination.  
3 (c) The commissioner may require any documents reasonably nec-  
4 essary to verify the information contained in the application.
- 5 Sec. 6. (a) An applicant for a public adjuster license under this act  
6 shall pass a written examination, unless exempt from this requirement  
7 pursuant to section 7, and amendments thereto. The examination shall  
8 test the knowledge of the individual concerning the duties and respon-  
9 sibilities of a public adjuster and the insurance laws and regulations of  
10 this state. Examinations required by this section shall be developed and  
11 conducted under rules and regulations prescribed by the commissioner.
- 12 (b) The commissioner may make arrangements, including contracting  
13 with an outside testing service, for administering examinations.
- 14 (c) An applicant who fails to appear for the examination as scheduled  
15 or fails to pass the examination may retake the examination following a  
16 waiting period of not less than seven days following the date of the first  
17 examination. If the applicant again fails to satisfactorily complete the ex-  
18 amination, the applicant may retake the examination following a waiting  
19 period of not less than seven days following the date of the second ex-  
20 amination. If the applicant again fails to satisfactorily complete the ex-  
21 amination, the applicant may retake the examination following a waiting  
22 period of not less than six months following the date of the third exami-  
23 nation, except that following a waiting period of not less than two years  
24 following the date of the third examination, the applicant will be treated  
25 as a new applicant and new examination and waiting periods shall apply.
- 26 Sec. 7. (a) An applicant who applies for a public adjuster license in  
27 this state, who is currently licensed as a public adjuster in another state  
28 based on the individual's passage of a public adjuster examination, shall  
29 not be required to complete any pre-licensing examination.
- 30 (b) An individual licensed as a public adjuster in another state, based  
31 on the individual's passage of a public adjuster examination, who moves  
32 to this state shall make application within 90 days of establishing legal  
33 residence in this state to become a resident licensee pursuant to section  
34 5, and amendments thereto. No pre-licensing examination shall be re-  
35 quired of that individual to obtain a public adjuster license.
- 36 (c) An individual who applies for a public adjuster license in this state  
37 and who was previously licensed as a public adjuster in this state, shall  
38 not be required to complete any pre-licensing examination, if the indi-  
39 vidual's application for licensure as a public adjuster is received within 12  
40 months of the cancellation of the applicant's previous license in this state  
41 and if, at the time of cancellation, the applicant was in good standing in  
42 this state.
- 43 Sec. 8. (a) Unless denied licensure pursuant to section 10, and

1 amendments thereto, a nonresident individual shall receive a nonresident  
2 public adjuster license, if:

3 (1) The individual is currently licensed and in good standing as a  
4 resident public adjuster in that individual's home state;

5 (2) the individual has submitted the proper request for licensure, has  
6 paid the appropriate fee required by section 5, and amendments thereto,  
7 and, if required by the commissioner to do so, has provided proof of  
8 financial responsibility in accordance with section 11, and amendments  
9 thereto;

10 (3) the individual has submitted to the commissioner the appropriate  
11 completed application for licensure; and

12 (4) the individual's home state awards nonresident public adjuster  
13 licenses to residents of this state on the same basis.

14 (b) The commissioner may verify the public adjuster's licensing status  
15 through the producer database maintained by the NAIC.

16 (c) As a condition to continuation of a public adjuster license issued  
17 under this section, the licensee shall maintain a resident public adjuster  
18 license in the licensee's home state. The nonresident public adjuster li-  
19 cense issued under this section shall terminate and be surrendered im-  
20 mediately to the commissioner, if the home state public adjuster license  
21 terminates for any reason, unless the public adjuster has a new home  
22 state and has been issued a license as a resident public adjuster in the  
23 new home state. Notification to the state or states where the nonresident  
24 license is issued must be made as soon as practicable, but no later than  
25 30 days of a change in the new home state resident license. The licensee  
26 shall include in such notification the licensee's new and old addresses. A  
27 new home state resident license is required for a nonresident license to  
28 remain valid, and the new home state must have reciprocity with this  
29 state, in order for the nonresident license to remain valid.

30 Sec. 9. (a) An individual who has met the requirements for licensure  
31 under this act shall be issued a public adjuster license. A public adjuster  
32 license shall remain in effect, unless revoked, terminated or suspended,  
33 as long as the request for renewal is timely submitted and a license re-  
34 newal fee of \$100 is paid and any other requirements for license renewal  
35 are met by the due date. The licensee shall inform the commissioner by  
36 any means acceptable to the commissioner of a change of address, change  
37 of legal name or change of information submitted on the application  
38 within 30 days of the change.

39 (b) A public adjuster shall be subject to the provisions of subsection  
40 (9) of K.S.A. 40-2404, and amendments thereto.

41 (c) A public adjuster who allows such person's license to lapse may,  
42 within 12 months from the due date of the renewal, be issued a new  
43 public adjuster license upon the commissioner's receipt of proof that the

1 licensee has satisfactorily completed the renewal process and the li-  
2 censee's payment of a reinstatement fee of \$100. The new public adjuster  
3 license shall be effective the date the commissioner receives such proof  
4 and the reinstatement fee.

5 (d) A licensed public adjuster that is unable to comply with license  
6 renewal procedures due to military service, a long-term medical disability  
7 or some other extenuating circumstance, may request an extension of  
8 time to comply with those procedures.

9 (e) The public adjuster license shall contain the licensee's name, city  
10 and state of business address, personal identification number, the date of  
11 issuance, the expiration date and any other information the commissioner  
12 deems necessary.

13 (f) In order to assist in the performance of the commissioner's duties,  
14 the commissioner may contract with non-governmental entities, including  
15 the NAIC, to perform any ministerial functions, including the collection  
16 of fees and data related to licensing that the commissioner may deem  
17 appropriate.

18 Sec. 10. (a) The commissioner may suspend, revoke or refuse to is-  
19 sue or renew a public adjuster's license for any of the following causes:

20 (1) Providing incorrect, misleading, incomplete or materially untrue  
21 information in the license application;

22 (2) violating:

23 (A) Any provision of chapter 40 of the Kansas Statutes Annotated,  
24 and amendments thereto, or any rule and regulation promulgated  
25 thereunder;

26 (B) any subpoena or order of the commissioner;

27 (C) any insurance law or regulation of another state; or

28 (D) any subpoena or order issued by the regulatory official for insur-  
29 ance in another state;

30 (3) obtaining or attempting to obtain a license through misrepresen-  
31 tation or fraud;

32 (4) misappropriating, converting or improperly withholding any mon-  
33 ies or properties received in the course of doing insurance business;

34 (5) intentionally misrepresenting the terms of an actual or proposed  
35 insurance contract or application for insurance;

36 (6) having been convicted of a misdemeanor or felony;

37 (7) having admitted or committed any insurance unfair trade practice  
38 or insurance fraud;

39 (8) using fraudulent, coercive or dishonest practices or demonstrating  
40 incompetence, untrustworthiness or financial irresponsibility in the con-  
41 duct of business in this state or elsewhere;

42 (9) having an insurance license, or its equivalent, denied, suspended  
43 or revoked in any other state, province, district or territory;

- 1 (10) forging another's name to an application for insurance or to any  
2 document related to an insurance transaction;
- 3 (11) cheating, including improperly using notes or any other refer-  
4 ence material, to complete an examination for an insurance license;
- 5 (12) knowingly accepting insurance business from an individual who  
6 is not licensed but who is required to be licensed by the commissioner;
- 7 (13) failing to comply with an administrative or court order imposing  
8 a child support obligation upon the applicant or license holder; or
- 9 (14) failing to pay state income tax or comply with any administrative  
10 or court order directing payment of state income tax.
- 11 (b) In addition, the commissioner may deny, suspend, revoke or re-  
12 fuse renewal of a public adjuster's license if the commissioner finds that  
13 the interests of the public are not properly served under such license.  
14 Any action taken under this section which affects any license or imposes  
15 any administrative penalty shall be taken only after notice and an oppor-  
16 tunity for a hearing conducted in accordance with the Kansas adminis-  
17 trative procedure act.
- 18 (c) In lieu of any action under subsection (a), the commissioner may:
- 19 (1) Censure the individual; or
- 20 (2) issue an order imposing an administrative penalty up to a maxi-  
21 mum of \$500 for each violation, but not to exceed \$2,500 for the same  
22 violation occurring within any six consecutive calendar months from the  
23 date of the original violation, unless such person knew or should have  
24 known that the violative act could give rise to disciplinary action under  
25 subsection (a). If such person knew or reasonably should have known the  
26 violative act could give rise to any disciplinary proceeding authorized by  
27 subsection (a), the commissioner may impose a penalty up to a maximum  
28 of \$1,000 for each violation, but not to exceed \$5,000 for the same vi-  
29 olation occurring within any six consecutive calendar months from the date  
30 of the original violation.
- 31 ***(d) The commissioner shall remit all such fines collected under***  
32 ***subsection (c) to the state treasurer in accordance with the provi-***  
33 ***sions of K.S.A. 75-4215, and amendments thereto. Upon receipt of***  
34 ***each such remittance, the state treasurer shall deposit the entire***  
35 ***amount in the state treasury to the credit of the state general fund.***
- 36 ~~(e)~~ (e) The commissioner shall retain the authority to enforce the  
37 provisions of and impose any penalty or remedy authorized by this act  
38 against any individual who is under investigation for or charged with a  
39 violation of this act, even if the individual's license or registration has  
40 been surrendered or has lapsed by operation of law.
- 41 Sec. 11. (a) Prior to issuance of a public adjuster license and for the  
42 duration of the license, the commissioner may require the applicant to  
43 furnish evidence of financial responsibility, in a format prescribed by the

1 commissioner, by means of:

2 (1) A surety bond executed and issued by an insurer authorized to  
3 issue surety bonds in this state, which bond:

4 (A) Shall be in such reasonable amount as the commissioner may  
5 require;

6 (B) shall be in favor of the commissioner and shall specifically au-  
7 thorize recovery by the commissioner on behalf of any person in this state  
8 who sustains damages as the result of erroneous acts, failure to act, con-  
9 viction of fraud or conviction of unfair practices in the applicant's capacity  
10 as a public adjuster; and

11 (C) shall not be terminated unless at least 30-days prior written notice  
12 has been filed by the insurer with the commissioner and given to the  
13 licensee.

14 (2) An irrevocable letter of credit issued by a qualified financial in-  
15 stitution, which letter of credit:

16 (A) Shall be in such reasonable amount as the commissioner may  
17 require;

18 (B) shall be to an account of the commissioner and subject to lawful  
19 levy of execution on behalf of any person to whom the public adjuster  
20 has been found to be legally liable as the result of erroneous acts, failure  
21 to act, fraudulent acts or unfair practices in the applicant's capacity as a  
22 public adjuster; and

23 (C) shall not be terminated unless at least 30-days prior written notice  
24 has been filed by the issuer with the commissioner and given to the  
25 licensee.

26 (b) Where the commissioner has required an applicant to furnish ev-  
27 idence of financial responsibility pursuant to subsection (a):

28 (1) The issuer of the evidence of financial responsibility shall notify  
29 the commissioner upon termination of the bond or letter of credit, unless  
30 otherwise directed by the commissioner;

31 (2) the commissioner may ask for the evidence of the public adjuster's  
32 financial responsibility at any time the commissioner deems relevant; and

33 (3) the authority to act as a public adjuster shall terminate automat-  
34 ically if the evidence of financial responsibility terminates or becomes  
35 impaired.

36 Sec. 12. (a) As used in this section:

37 (1) "Biennial due date" means the date of birth of any public adjuster  
38 who is required to complete continuing education credits and report the  
39 completion of the continuing education credits to the commissioner, ex-  
40 cept that such due date shall not be earlier than two years from the date  
41 of the public adjuster's initial licensure under this act.

42 (2) "Biennium" means, for any public adjuster who was born in an  
43 odd-numbered year, the two-year period starting with the public adjus-

1 ter's biennial due date in 2011 and each two-year period thereafter. For  
2 any public adjuster who was born in an even-numbered year, such term  
3 means the two-year period starting with the public adjuster's biennial due  
4 date in 2012 and each two-year period thereafter.

5 (b) An individual, who holds a public adjuster license and who is not  
6 exempt under subsection (d), shall satisfactorily complete a minimum of  
7 12 hours of continuing education courses, which shall include 11 hours  
8 of property/casualty or general continuing education courses and one  
9 hour of ethics, reported on a biennial basis in conjunction with the license  
10 renewal cycle. Only continuing education courses approved by the com-  
11 missioner shall be used to satisfy the requirements of this subsection.

12 (c) Unless suspended, revoked or refused renewal pursuant to section  
13 10, and amendments thereto, a public adjuster's license shall remain in  
14 effect as long as the education requirements for a resident public adjuster  
15 are met by such public adjuster's biennial due date.

16 (d) The continuing education requirements of this section shall not  
17 apply to licensees holding nonresident public adjuster licenses who have  
18 met the continuing education requirements of their home state and whose  
19 home state gives credit to residents of this state on the same basis.

20 Sec. 13. (a) No public adjuster shall charge, agree to or accept as  
21 compensation or reimbursement any payment, commission, fee or other  
22 thing of value equal to more than 10% of any insurance settlement or  
23 proceeds.

24 (b) A public adjuster shall not pay a commission, service fee or other  
25 valuable consideration to a person for investigating or settling first party  
26 claims in this state, if that person is a business entity or is an individual  
27 required to be licensed under this act and is not so licensed.

28 (c) A person shall not accept a commission, service fee or other val-  
29 uable consideration for investigating or settling first party claims in this  
30 state, if that person is a business entity or is an individual required to be  
31 licensed under this act and is not so licensed.

32 (d) No public adjuster shall require, demand or accept any fee, re-  
33 tainer, compensation, deposit or other thing of value, prior to settlement  
34 of a claim.

35 Sec. 14. (a) Public adjusters shall ensure that all contracts for their  
36 services are in writing and contain the following:

- 37 (1) Legible full name of the public adjuster signing the contract;
- 38 (2) permanent home state business address and phone number of the  
39 public adjuster;
- 40 (3) the public adjuster's license number;
- 41 (4) title of "public adjuster contract";
- 42 (5) the insured's full name, street address, insurance company name  
43 and policy number, if known or upon notification;

- 1 (6) a description of the loss and its location, if applicable;
- 2 (7) description of services to be provided to the insured;
- 3 (8) signatures of the public adjuster and the insured;
- 4 (9) the date the contract was signed by the public adjuster and the  
5 date the contract was signed by the insured;
- 6 (10) attestation language stating that the public adjuster is fully  
7 bonded pursuant to this act; and
- 8 (11) full salary, fee, commission, compensation or other considera-  
9 tions the public adjuster is to receive for services to be rendered by the  
10 public adjuster for or on behalf of the insured.
- 11 (b) The public adjuster contract may specify that the public adjuster  
12 shall be named as a co-payee on an insurer's payment of a claim. If the  
13 compensation is based on a share of the insurance settlement, the exact  
14 percentage shall be specified. Compensation provisions in a public ad-  
15 juster contract shall not be redacted in any copy of the contract provided  
16 to the commissioner.
- 17 (c) If the insurer, not later than 72 hours after the date on which the  
18 loss is reported to the insurer, either pays or commits in writing to pay  
19 to the insured the policy limit of the insurance policy, the public adjuster  
20 shall:
  - 21 (1) Not receive a commission consisting of a percentage of the total  
22 amount paid by an insurer to resolve a claim;
  - 23 (2) inform the insured that the loss recovery amount might not be  
24 increased by the insurer; and
  - 25 (3) be entitled only to reasonable compensation from the insured for  
26 services provided by the public adjuster on behalf of the insured, based  
27 on the time spent on a claim and expenses incurred by the public adjuster,  
28 until the claim is paid or the insured receives a written commitment to  
29 pay from the insurer.
- 30 (d) A public adjuster shall provide the insured a written disclosure  
31 concerning any direct or indirect financial interest that the public adjuster  
32 has with any other party who is involved in any aspect of the claim, other  
33 than the salary, fee, commission or other consideration established in the  
34 written contract with the insured, including, but not limited to, any own-  
35 ership of, other than as a minority stockholder, or any compensation ex-  
36 pected to be received from, any construction firm, salvage firm, building  
37 appraisal firm, motor vehicle repair shop or any other firm that provides  
38 estimates for work, or that performs any work, in conjunction with dam-  
39 ages caused by the insured loss on which the public adjuster is engaged.  
40 As used in this subsection, the word "firm" shall include any individual  
41 or business entity.
- 42 (e) A public adjuster contract may not contain any contract term that:
  - 43 (1) Allows the public adjuster's percentage fee to be collected when

- 1 money is due from an insurance company, but not paid, or that allows a  
2 public adjuster to collect the entire fee from the first check issued by an  
3 insurance company, rather than as percentage of each check issued by an  
4 insurance company;
- 5 (2) requires the insured to authorize an insurance company to issue  
6 a check only in the name of the public adjuster;
- 7 (3) imposes collection costs or late fees; or
- 8 (4) precludes a public adjuster from pursuing civil remedies.
- 9 (f) Prior to the signing of the contract the public adjuster shall provide  
10 the insured with a separate disclosure document regarding the claim pro-  
11 cess that states:
- 12 (1) Property insurance policies obligate the insured to present a claim  
13 to the insured's insurance company for consideration;
- 14 (2) there are three types of adjusters that could be involved in that  
15 process, and they are as follows:
- 16 (A) A company adjuster who is an employee of an insurance company,  
17 represents the interest of the insurance company, is paid by the insurance  
18 company and will not charge the insured a fee;
- 19 (B) an independent adjuster who is hired on a contract basis by an  
20 insurance company to represent the insurance company's interest in the  
21 settlement of the claim, who is paid by the insured's insurance company  
22 and will not charge the insured a fee; or
- 23 (C) a public adjuster who does not work for any insurance company  
24 but works for an insured to assist in the preparation, presentation and  
25 settlement of a claim. An insured engages a public adjuster by signing a  
26 contract agreeing to pay the public adjuster a fee or commission based  
27 on a percentage of the settlement, or other method of compensation;
- 28 (3) the insured is not required to hire a public adjuster to help the  
29 insured meet the insured's obligations under the policy, but has the right  
30 to do so;
- 31 (4) the insured has the right to initiate direct communications with  
32 the insured's attorney, the insurer, the insurer's adjuster and the insurer's  
33 attorney, or any other person regarding the settlement of the insured's  
34 claim;
- 35 (5) the public adjuster is not a representative or employee of the  
36 insurer;
- 37 (6) the salary, fee, commission or other consideration is the obligation  
38 of the insured, not the insurer.
- 39 (g) The contracts shall be executed in duplicate to provide an original  
40 contract to the public adjuster and an original contract to the insured.  
41 The public adjuster's original contract shall be available at all times for  
42 inspection without notice by the commissioner.
- 43 (h) The public adjuster shall provide the insurer a notification letter,

1 which has been signed by the insured, authorizing the public adjuster to  
2 represent the insured's interest.

3 (i) The insured has the right to rescind the public adjuster contract  
4 within three business days after the date the contract was signed. The  
5 rescission shall be in writing and mailed or delivered to the public adjuster  
6 at the address in the contract within the three business day period.

7 (j) If the insured exercises the right to rescind the contract, anything  
8 of value given by the insured under the contract will be returned to the  
9 insured within 15 business days following the receipt by the public ad-  
10 juster of the rescission notice.

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

- 14 (1) Name of the insured;
- 15 (2) date, location and amount of the loss;
- 16 (3) copy of the contract between the public adjuster and insured;
- 17 (4) name of the insurer and the amount, expiration date and number  
18 of each policy carried by the insured with respect to the loss;
- 19 (5) itemized statement of the insured's recoveries;
- 20 (6) itemized statement of all compensation received by the public  
21 adjuster, from any source whatsoever, in connection with the loss;
- 22 (7) a register of all moneys received, deposited, disbursed or with-  
23 drawn in connection with a transaction with an insured, including fees,  
24 transfers and disbursements from a trust account and all transactions con-  
25 cerning all interest-bearing accounts;
- 26 (8) name of public adjuster who executed the contract;
- 27 (9) name of the attorney representing the insured, if applicable, and  
28 the name of the claims representatives of the insurance company; and
- 29 (10) evidence of financial responsibility in the format prescribed by  
30 the commissioner.

31 (b) Records shall be maintained for at least five years after the ter-  
32 mination of the transaction with an insured and shall be open to exami-  
33 nation by the commissioner at all times.

34 (c) Records submitted to the commissioner in accordance with this  
35 section that contain information identified in writing as proprietary by the  
36 public adjuster shall be treated as confidential by the commissioner and  
37 shall not be open for inspection under the Kansas open records act.

38 (d) The provisions of subsection (c) shall expire on July 1, 2014, unless  
39 the legislature acts to reenact such provisions. The provisions of subsec-  
40 tion (c) shall be reviewed by the legislature prior to July 1, 2014.

41 Sec. 16. (a) A public adjuster is obligated, under the public adjuster's  
42 license, to serve with objectivity and complete loyalty, the interest of the  
43 insured only and to render to the insured such information, counsel and

1 service, as within the knowledge, understanding and opinion in good faith  
2 of the public adjuster, as will best serve the insured's insurance claim  
3 needs and interest.

4 (b) A public adjuster shall not solicit, or attempt to solicit, an insured  
5 during the progress of a loss-producing occurrence, as defined in the  
6 insured's insurance contract.

7 (c) A public adjuster shall not permit an unlicensed employee or rep-  
8 resentative of the public adjuster to conduct business for which a license  
9 is required under this act.

10 (d) A public adjuster shall not have a direct or indirect financial in-  
11 terest in any aspect of the claim, other than the salary, fee, commission  
12 or other consideration established in the written contract with the in-  
13 sured, unless full written disclosure has been made to the insured as set  
14 forth in section 14, and amendments thereto.

15 (e) A public adjuster shall not acquire any interest in salvage of prop-  
16 erty subject to the contract with the insured, unless the public adjuster  
17 obtains written permission from the insured after settlement of the claim  
18 with the insurer as set forth in section 14, and amendments thereto.

19 (f) The public adjuster shall abstain from referring or directing the  
20 insured to get needed repairs or services in connection with a loss from  
21 any person, unless disclosed to the insured:

22 (1) With whom the public adjuster has a financial interest; or

23 (2) from whom the public adjuster may receive direct or indirect  
24 compensation for the referral.

25 (g) The public adjuster shall disclose to an insured if the public ad-  
26 juster has any interest or will be compensated by any construction firm,  
27 salvage firm, building appraisal firm, motor vehicle repair shop or any  
28 other firm that performs any work in conjunction with damages caused  
29 by the insured loss. As used in this subsection "firm" shall include any  
30 business entity or individual.

31 (h) Any compensation or anything of value in connection with an  
32 insured's specific loss that will be received by a public adjuster shall be  
33 disclosed by the public adjuster to the insured in writing, including the  
34 source and amount of any such compensation.

35 (i) Public adjusters shall adhere to the following general ethical  
36 requirements:

37 (1) A public adjuster shall not undertake the adjustment of any claim  
38 if the public adjuster is not competent and knowledgeable as to the terms  
39 and conditions of the insurance coverage, or which otherwise exceeds the  
40 public adjuster's current expertise;

41 (2) a public adjuster shall not knowingly make any oral or written  
42 material misrepresentations or statements which are false or maliciously  
43 critical and intended to injure any person engaged in the business of

1 insurance to any insured client or potential insured client;

2 (3) no licensed public adjuster may represent or act as a company  
3 adjuster or independent adjuster on the same claim;

4 (4) the public adjuster contract shall not be construed to prevent an  
5 insured from pursuing any civil remedy after the three-business day rev-  
6 ocation or cancellation period;

7 (5) a public adjuster shall not enter into a contract or accept a power  
8 of attorney that vests in the public adjuster the effective authority to  
9 choose the persons who shall perform repair work; and

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

13 (j) A public adjuster may not agree to any loss settlement without the  
14 insured's knowledge and consent.

15 Sec. 17. (a) The public adjuster shall report to the commissioner any  
16 administrative action taken against the public adjuster in another juris-  
17 diction or by another governmental agency in this state within 30 days of  
18 the final disposition of the matter. This report shall include a copy of the  
19 order, consent to order or other relevant legal documents.

20 (b) Within 30 days of the initial pretrial hearing date, the public ad-  
21 juster shall report to the commissioner any criminal prosecution of the  
22 public adjuster taken in any jurisdiction. The report shall include a copy  
23 of the initial complaint filed, the order resulting from the hearing and any  
24 other relevant legal documents.

25 Sec. 18. The commissioner shall promulgate such reasonable rules  
26 and regulations as are necessary to carry out the provisions of this act.  
27 ***The commissioner shall adopt such rules and regulations by July 1,***  
28 ***2010.***

29 Sec. 19. If any provisions of this act, or the application of a provision  
30 to any person or circumstances, shall be held invalid, the remainder of  
31 the act, and the application of the provision to persons or circumstances  
32 other than those to which it is held invalid, shall not be affected.

33 Sec. 20. This act shall take effect and be in force from and after its  
34 publication in the statute book.