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## National Council of Insurance Legislators (NCOIL)

### Public Adjuster Professional Standards Reform Model Act

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*\*Sponsored by Rep. Michael Meredith (KY)*

*\*Co-sponsored by Rep. Matt Lehman (IN) and Del. Steve Westfall (WV)*

*\*Adopted by the NCOIL Property & Casualty Insurance Committee on February 2, 2024 and NCOIL Executive Committee on April 14, 2024.*

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#### Section 1. Title

This Act shall be known and cited as the “[State] Public Adjuster Professional Standards Reform Act.”

*Drafting Note: This Model Act is primarily intended to amend each state’s statutory code that sets forth licensing and other professional standards for public adjusters.*

#### Section 2. Definitions

(1) "Person" includes an individual, firm, company, association, organization, partnership, limited liability company, or corporation.

(2) "Public insurance adjuster" or “public adjuster” means:

(A) a person who, for direct, indirect, or any other compensation:

(i) acts on behalf of an insured in the adjusting of a claim or claims for loss or damage under any policy of insurance covering real or personal property; or

(ii) on behalf of any other public insurance adjuster, investigates, settles, or adjusts or advises or assists an insured with a claim or claims for loss or damage under any policy of insurance covering real or personal property; or

(B) a person who advertises, solicits business, or holds himself or herself out to the public as an adjuster of claims for loss or damage under any policy of insurance covering real or personal property.

### **Section 3. Application for License**

(1) Except as provided in this section and xxxxx, no person shall in this state act as or hold himself, herself, or itself out to be a public adjuster unless then licensed by the department as a public adjuster.

(2) (a) An individual applying for a resident public adjuster license shall make an application to the commissioner on the appropriate uniform individual application and in a format prescribed by the commissioner.

(b) An applicant under paragraph (a) of this subsection shall declare under penalty of suspension, revocation, or refusal of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief.

(c) Before approving an application submitted under paragraph (a) of this subsection, the commissioner shall find that the individual to be licensed:

1. Is at least eighteen (18) years of age;
2. Is eligible to designate [State] as the individual's home state;
3. Is trustworthy, reliable, and of good reputation, evidence of which shall be determined through an investigation by the commissioner;
4. Has not committed any act that is a ground for probation, suspension, revocation, or refusal of a license as set forth in xxxxxx;
5. Has successfully passed the examination for the adjuster license and the applicable line of authority for which the individual has applied;
6. Has paid the fees established by the commissioner pursuant to xxxxx; and
7. Is financially responsible to exercise the license.

(3) (a) To demonstrate financial responsibility, a person applying for a public adjuster license shall obtain a bond or irrevocable letter of credit prior to issuance of a license and shall maintain the bond or letter of credit for the duration of the license with the following limits:

1. A surety bond executed and issued by an insurer authorized to issue surety bonds in [State], which bond shall:

a. Be in the minimum amount of fifty thousand dollars (\$50,000);

b. Be in favor of the state of [xxxxxxx];

c. Specifically authorize recovery of any person in [State] who sustained damages as the result of the public adjuster's erroneous acts, failure to act, conviction of fraud, or conviction for unfair trade practices in his or her capacity as a public adjuster; and

d. Not be terminated unless written notice is given to the licensee at least thirty (30) days prior to the termination; or

2. An irrevocable letter of credit issued by a qualified financial institution, which letter of credit shall:

a. Be in the minimum amount of fifty thousand dollars (\$50,000);

b. Be subject to lawful levy of execution on behalf of any person to whom the public adjuster has been found to be legally liable as the result of erroneous acts, failure to act, conviction of fraud, or conviction for unfair practices in his or her capacity as a public adjuster; and

c. Not be terminated unless written notice is given to the licensee at least thirty (30) days prior to the termination.

(b) The commissioner may ask for evidence of financial responsibility at any time the commissioner deems relevant.

(c) If the evidence of financial responsibility terminates or becomes impaired, the public adjuster license shall:

1. Automatically terminate; and

2. Be promptly surrendered to the commissioner without demand.

(4) (a) A business entity applying for a resident public adjuster license shall make an application to the commissioner on the appropriate uniform business entity application and in a format prescribed by the commissioner.

(b) An applicant under paragraph (a) of this subsection shall declare under penalty of suspension, revocation, or refusal of the license that the statements made in the application are true, correct, and complete to the best of the business entity's knowledge and belief.

(c) Before approving an application submitted under paragraph (a) of this subsection, the commissioner shall find that the business entity:

1. Is eligible to designate [State] as its home state;
2. Has designated a licensed independent or public adjuster responsible for the business entity's compliance with the insurance laws and regulations of [State];
3. Has not committed an act that is a ground for probation, suspension, revocation, or refusal of a public adjuster's license as set forth in xxxx; and
4. Has paid the fees established by the commissioner pursuant to xxxxxx.

(5) For applications made under this section, the commissioner may:

- (a) Require additional information or submissions from applicants; and
- (b) Obtain any documents or information reasonably necessary to verify the information contained in an application.

(6) Unless denied licensure pursuant to xxxxx, a person or business entity who has met the requirements of subsections (2) to (5) of this section shall be issued a public adjuster license.

(7) A public adjuster may qualify for a license in one (1) or more of the following lines of authority:

- (a) Property and casualty; or
- (b) Crop.

(8) Notwithstanding any other provision of this subtitle, a license as a public adjuster shall not be required of the following:

- (a) An attorney licensed to practice law in [State], when acting in his or her professional capacity as an attorney;
- (b) A person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract;

(c) A person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster, including photographers, estimators, private investigators, engineers, and handwriting experts;

(d) A licensed health care provider or its employee who prepares or files a health claim form on behalf of a patient; or

(e) An employee or agent of an insurer adjusting claims relating to food spoilage with respect to residential property insurance in which the amount of coverage for the applicable type of loss is contractually limited to one thousand dollars (\$1,000) or less.

(9) For purposes of this section, except as otherwise provided in subsection (10) of this section, "home state" means any state or territory of the United States or the District of Columbia in which a public adjuster:

(a) Maintains his, her, or its principal place of residence or business; and

(b) Is licensed to act as a resident public adjuster.

(10) (a) As used in this subsection, "home state" has the same meaning as in subsection (9) of this section, except that for purposes of this subsection the term includes any state or territory of the United States or the District of Columbia in which an applicant under this subsection is licensed to act as a resident public adjuster if the state or territory of the applicant's principal place of residence does not issue a public adjuster license.

(b) Unless refused licensure in accordance with xxxxx, a nonresident person shall receive a nonresident public adjuster license if:

1. The person is currently licensed in good standing as a public adjuster in his, her, or its home state;

2. The person has submitted the proper request for licensure and has paid the fees required by xxxxx;

3. The person has submitted, in a form or format prescribed by the commissioner, the uniform individual application; and

4. The person's designated home state issues nonresident public adjuster licenses to persons of [State] on the same basis.

(c) The commissioner may:

1. Verify an applicant's licensing status through any appropriate database, including the database maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries; or

2. Request certification of an applicant's good standing.

(d) As a condition to the continuation of a nonresident adjuster license, the licensee shall maintain a resident adjuster license in his, her, or its home state.

(e) A nonresident adjuster license issued under this subsection shall terminate and be surrendered immediately to the commissioner if the licensee's resident adjuster license terminates for any reason, unless:

1. The termination is due to the licensee being issued a new resident public adjuster license in his, her, or its new home state; and

2. The new resident state or territory has reciprocity with [State].

#### **Section 4. Public Adjuster and Insured Contract Requirements**

(1) (a) A public adjuster shall not provide services to an insured until a written contract with the insured has been executed on a form that has been pre-filed with and approved by the commissioner.

(b) A contract between a public adjuster and an insured in violation of paragraph (a) of this subsection shall not be enforceable in this state.

(c) A form pre-filed with the commissioner by a public adjuster for approval under paragraph (a) of this subsection shall be subject to disapproval by the commissioner at any time if the form is found to:

1. Violate any provision of this chapter;

2. Contain or incorporate by reference any inconsistent, ambiguous, or misleading clauses; or

3. Contain any title, heading, or other indication of its provisions which is:

a. Misleading; or

b. Printed in a size of typeface or manner of reproduction so as to be substantially illegible.

(d) A contract between a public adjuster and an insured that was executed on a form that was pre-filed with and approved by the commissioner under paragraph (a) of this subsection prior to a disapproval of the form under paragraph (d) of this subsection shall be enforceable to the extent allowed by:

1. Ordinary principles of contract; and

2. Any applicable state or federal laws implicated by the contract.

(2) A public adjuster shall ensure that all contracts between the public adjuster and the insured for services are in writing and contain the following terms:

- (a) The legible full name of the adjuster signing the contract, as specified in the department's licensing records;
- (b) The adjuster's permanent home state business address and phone number;
- (c) The license number issued to the adjuster by the department;
- (d) A title of "Public Adjuster Contract";
- (e) The insured's full name, street address, insurer name, and policy number, if known or upon notification;
- (f) A description of the loss or damage and its location, if applicable;
- (g) A description of services to be provided to the insured;
- (h) The signatures of the adjuster and the insured;
- (i) The date the contract was signed by:
  - 1. The adjuster; and
  - 2. The insured;
- (j) Attestation language stating that the adjuster has a letter of credit or a surety bond as required by xxxxx;
- (k) The full salary, fee, commission, compensation, or other consideration the adjuster is to receive for services, including but not limited to:
  - 1. If the compensation is based on a percentage of the insurance settlement, the exact percentage, which shall be in accordance with Section xxx of this Act;
  - 2. The initial expenses to be reimbursed to the adjuster from the proceeds of the claim payment, specified by type, with dollar estimates; and
  - 3. Any additional expenses, if first approved by the insured;
- (l) A statement that the public adjuster may not render services or perform acts that constitute the practice of law.

- (m) A statement that the adjuster shall not act on behalf of or aid any person in negotiating or settling a claim relating to bodily injury, death, or noneconomic damages;
  - (n) The process for rescinding the contract, including the date by which rescission of the contract by the adjuster or the insured may occur; and
  - (o) A statement that clearly states in substance the following: "Complaints regarding this contract or regarding the public adjuster may be filed with the consumer protection division of the [State] Department of Insurance."
- (3) (a) Compensation provisions in a contract between a public adjuster and an insured shall not be redacted in any copy of the contract provided to the commissioner.
- (b) A redaction prohibited under paragraph (a) of this subsection shall constitute an omission of material fact in violation of xxxx and xxxx.
- (4) A contract between a public adjuster and an insured shall not contain any contract term that:
- (a) Allows the adjuster's percentage fee to be collected when money is due from an insurer, but not paid;
  - (b) Allows the adjuster to collect the entire fee from the first check issued by an insurer, rather than as a percentage of each check issued by an insurer;
  - (c) Requires an insured to authorize an insurer to issue a check only in the name of the adjuster;
  - (d) Imposes collection costs or late fees;
  - (e) Allows the adjuster's rate of compensation to be increased based on the fact that a claim is litigated; or
  - (f) Precludes the adjuster from pursuing civil remedies.
- (5) Prior to the signing of a contract with an insured, a public adjuster shall provide the insured with a separate disclosure document regarding the claim process that states the following:
- "Property insurance policies obligate the insured to present a claim to his or her insurance company for consideration. Three (3) types of adjusters may be involved in the claim process as follows:
- 1. "Staff adjuster" means an insurance adjuster who is an employee of an insurance company, who represents the interest of the insurance company, and who is paid by the insurance company. A staff adjuster shall not charge a fee to the insured;



2. "Independent adjuster" means an insurance adjuster who is hired on a contract basis by an insurance company to represent the insurance company's interest in the settlement of the claims and who is paid by the insurance company. An independent adjuster shall not charge a fee to the insured; and

3. "Public adjuster" means an insurance adjuster who does not work for any insurance company. A public adjuster works for the insured to assist in the preparation, presentation, and settlement of the claim, and the insured hires a public adjuster by signing a contract agreeing to pay him or her a fee or commission based on a percentage of the settlement or another method of payment.

The insured is not required to hire a public adjuster to help the insured meet his or her obligations under the policy, but has the right to hire a public adjuster. The insured has the right to initiate direct communications with the insured's attorney, the insurer, the insurer's adjuster, the insurer's attorney, and any other person regarding the settlement of the insured's claim. The public adjuster shall not be a representative or employee of the insurer. The salary, fee, commission, or other consideration paid to the public adjuster is the obligation of the insured, not the insurer."

(6) (a) A contract between a public adjuster and an insured shall be executed in duplicate to provide an original contract to:

1. The public adjuster; and
2. The insured.

(b) A public adjuster's original contract shall be available at all times for inspection by the commissioner without notice.

(7) Within seventy-two (72) hours of entering into a contract with an insured, a public adjuster shall provide the insurer:

(a) A notification letter that:

1. Has been signed by the insured; and
2. Authorizes the public adjuster to represent the insured's interest; and

(b) A copy of the contract.

(8) (a) The insured shall have the right to rescind a contract with a public adjuster within three (3) business days after the date the contract was signed.

(b) A rescission of a public adjuster contract shall be:

1. In writing;
2. Mailed or delivered to the public adjuster at the address in the contract; and
3. Postmarked or received within the three (3) business day period.

(9) If an insured exercises the right to rescind a contract under subsection (8) of this section, anything of value given by the insured under the contract to the public adjuster shall be returned to the insured within fifteen (15) business days following receipt by the public adjuster of the rescission notice.

**Section 5. Insured's rights -Written notice requirement -Duties of public adjuster**

(1) A public adjuster shall give an insured written notice of the insured's rights under this section and Sections 2 and 4 of this Act.

(2) A public adjuster shall prepare each claim for an insured represented by the public adjuster in accordance with the terms and conditions of the contract of insurance under which recovery is sought.

(3) A public adjuster shall ensure that:

- (a) Prompt notice of a claim is provided to the insurer;
- (b) The property that is subject to a claim is available for inspection of the loss or damage by the insurer; and
- (c) The insurer is given the opportunity to interview the insured directly about the loss or damage and claim.

(4) A public adjuster shall not restrict or prevent an insurer or its adjuster, or an attorney, investigator, or other person acting on behalf of the insurer, from:

- (a) Having reasonable access, at reasonable times, to:
  1. The insured or claimant; or
  2. The insured property that is the subject of a claim;
- (b) Obtaining necessary information to investigate and respond to a claim; or
- (c) Corresponding directly with the insured regarding the claim, except a public adjuster shall be copied on any correspondence with the insured relating to the claim.

- (5) (a) A public adjuster shall not act or fail to reasonably act in any manner that obstructs or prevents the insurer or its adjuster from timely conducting an inspection of any part of the insured property for which there is a claim for loss or damage.
- (b) Except as provided in paragraph (c) of this subsection, a public adjuster representing an insured may be present for the insurer's inspection.
- (c) If the unavailability of a public adjuster, after a reasonable request by the insurer, otherwise delays the insurer's timely inspection of the property, the insured shall allow the insurer to have access to the property without the participation or presence of the public adjuster in order to facilitate the insurer's prompt inspection of the loss or damage.
- (6) A public adjuster shall provide the insured, the insurer, and the commissioner with a written disclosure concerning any direct or indirect financial interest that the adjuster has with any other party who is involved in any aspect of the claim.
- (7) A public adjuster shall not:
- (a) Participate, directly or indirectly, in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the adjuster;
- (b) Engage in any activities that may be reasonably construed as a conflict of interest, including, directly or indirectly, soliciting or accepting any remuneration of any kind or nature;
- (c) Solicit or attempt to solicit a client for employment during the progress of a loss-producing natural disaster occurrence.
- (d) Have a financial interest in any salvage, repair, or any other business entity that obtains business in connection with any claim that the public adjuster has a contract to adjust; or
- (e) 1. Use claim information obtained in the course of any claim investigation for commercial purposes.
2. As used in subparagraph 1. of this paragraph, "commercial purposes" includes marketing or advertising used for the benefit of the public adjuster.
- (f) File a complaint with the commissioner on behalf of an insured alleging an unfair claim settlement practice unless the insured has given written consent for the public adjuster to file the complaint on the insured's behalf.
- (g) Pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, to a person who is not a licensed public insurance adjuster a fee, commission, or other valuable consideration for the referral of an insured to the public insurance adjuster for purposes of

the insured entering a contract with that public insurance adjuster or for any other purpose.

(h) Accept a fee, commission, or other valuable consideration of any nature, regardless of form or amount, in exchange for the referral by a licensed public insurance adjuster of an insured to any third-party individual or firm, including an attorney, appraiser, umpire, construction company, contractor, or salvage company.

## **Section 6. Requirements for Funds Received or Held by Public Adjuster**

(1) All funds received or held by a public adjuster on behalf of an insured toward the settlement of a claim shall be:

(a) Handled in a fiduciary capacity; and

(b) Deposited into one (1) or more separate noninterest-bearing fiduciary trust accounts in a financial institution licensed to do business in this state no later than the close of the second business day from the receipt of the funds.

(2) The funds referenced in subsection (1) of this section shall:

(a) Be held separately from any personal or nonbusiness funds;

(b) Not be commingled or combined with other funds;

(c) Be reasonably ascertainable from the books of accounts and records of the public adjuster; and

(d) Be disbursed within thirty (30) calendar days of any invoice received by the public adjuster upon approval of the insured or the claimant that the work has been satisfactorily completed.

(3) A public adjuster shall maintain an accurate record and itemization of any funds deposited into an account under subsection (1) of this section in accordance with xxxxxx.

## **Section 7. Fees and Commissions for Public Adjuster**

(1) Except as provided in subsection (2) of this section:

(a) Any fee charged to an insured by a public adjuster shall be:

1. Based only on the amount of the insurance settlement proceeds actually received by the insured; and

2. Collected by the public adjuster after the insured has received the insurance settlement proceeds from the insurer;

(b) A public adjuster may receive a commission for services provided under this subtitle consisting of:

1. An hourly fee;
2. A flat rate;
3. A percentage of the total amount paid by the insurer to resolve a claim; or
4. Another method of compensation; and

(c) A public adjuster:

1. Shall not charge an unreasonable fee; and
2. May charge a reasonable fee that does not exceed, inclusive of all compensation the public adjuster is paid on a claim:
  - a. For non-catastrophic claims, fifteen percent (15%) of the total insurance recovery of the insured; and
  - b. For catastrophic claims, ten percent (10%) of the total insurance recovery of the insured.

*Drafting Note: The fee caps included in this model are the maximum fees the model allows. States may, and some states do, impose lower caps, and the intent of this model is not to replace any lower caps.*

(2) If an insurer, not later than seventy-two (72) hours after the date on which a loss or damage is reported to the insurer, either pays or commits in writing to pay the policy limit of the insurance policy to the insured, a public adjuster shall:

- (a) Not receive a commission consisting of a percentage of the total amount paid by the insurer to resolve a claim;
- (b) Inform the insured that the claim settlement amount may not be increased by the insurer; and
- (c) Be entitled only to reasonable compensation from the insured for services provided by the adjuster on behalf of the insured, based on the time spent on the claim and expenses incurred by the adjuster prior to when the claim was paid or the insured received a written commitment to pay from the insurer.

## **Section 8. Penalties**

(1) The commissioner may place on probation, suspend, or may impose conditions upon the continuance of a license for not more than twenty-four (24) months, revoke, or refuse to issue or renew any license issued under this Act, or may levy a civil penalty in accordance with xxxxxx, or any combination of actions for any one (1) or more of the following causes:

- (a) Providing incorrect, misleading, incomplete, or materially untrue information in a license application;
- (b) Violating any insurance laws, or violating any administrative regulations, subpoena, or order of the commissioner or of another state's insurance commissioner;
- (c) Obtaining or attempting to obtain a license through misrepresentation or fraud;
- (d) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business;
- (e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- (f) Having been convicted of or having pled guilty or nolo contendere to any felony;
- (g) Having admitted or been found to have committed any unfair insurance trade practice or insurance fraud;
- (h) Using fraudulent, coercive, or dishonest practices; or demonstrating incompetence, untrustworthiness, or financial irresponsibility; or being a source of injury or loss to the public in the conduct of business in this state or elsewhere;
- (i) Having an insurance license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;
- (j) Surrendering or otherwise terminating any license issued by this state or by any other jurisdiction, under threat of disciplinary action, denial, or refusal of the issuance of or renewal of any other license issued by this state or by any other jurisdiction; or revocation or suspension of any other license held by the licensee issued by this state or by any other jurisdiction;
- (k) Forging another's name to an application for insurance or to any other document related to an insurance transaction;
- (l) Cheating, including improperly using notes or any other reference material to complete an examination for license;
- (m) Knowingly accepting insurance from an individual or business entity who is not licensed, but who is required to be licensed under this subtitle;

- (n) Failing to comply with an administrative or court order imposing a child support obligation;
  - (o) Failing to pay state income tax or to comply with any administrative or court order directing payment of state income tax;
  - (p) Having been convicted of a misdemeanor for which restitution is ordered in excess of three hundred dollars (\$300), or of any misdemeanor involving dishonesty, breach of trust, or moral turpitude;
  - (q) Failing to no longer meet the requirements for initial licensure; or
  - (r) Any other cause for which issuance of the license could have been refused, had it then existed and been known to the commissioner.
- (2) (a) For any public adjuster, the commissioner may deny, suspend, or revoke the adjuster's license or impose a fine not to exceed five thousand dollars (\$5,000) per act against the adjuster, or both, for any of the following causes:
1. Violating any provision of this chapter;
  2. Violating any administrative regulation or order of the commissioner;
  3. Receiving payment or anything of value as a result of an unfair or deceptive practice;
  4. Receiving or accepting any fee, kickback, or other thing of value pursuant to any agreement or understanding, oral or otherwise, from anyone other than an insured;
  5. Entering into a split-fee arrangement with another person who is not a public adjuster; or
  6. Being otherwise paid or accepting payment for public adjuster services that have not been performed.
- (b) The sanctions and penalties under this subsection shall be in addition to any other remedies, penalties, or sanctions available to the commissioner against a public adjuster under this section or any other law.
- (3) The license of a business entity may be suspended, revoked, or refused for any cause relating to an individual designated in or registered under the license if the commissioner finds that:
- (a) An individual licensee's violation was known or should have been known by one (1) or more of the partners, officers, or managers acting on behalf of the business entity; and

(b) The violation was not reported to the department nor corrective action taken.

(4) The applicant or licensee may make written request for a hearing in accordance with xxxx.

(5) The commissioner shall retain the authority to enforce the provisions and penalties of this chapter against any individual or business entity who is under investigation for or charged with a violation of this chapter, even if the individual's or business entity's license has been surrendered or has lapsed by operation of law.

(6) The sanctions and penalties applicable to licenses and licensees under subsection (1) of this section shall also be applicable to registrations and registrants under xxxxxx.

(7) Any contract for services regulated by this Act that is entered into by an insured with a person who is in violation of the public adjuster licensure requirements of this state shall be voided. If a contract is voided under this section, the insured is not liable for the payment of any past services rendered, or future services to be rendered, by the violating person under that contract or otherwise.

#### **Section 9. Rules**

Pursuant to xxxxxx, the commissioner may promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of this Act.

#### **Section 10. Effective Date**

This Act shall take effect xxxxxx.