

## SENATE BILL No. 181

By Committee on Financial Institutions and Insurance

1-31

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AN ACT enacting the public adjusters licensing act.

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

Section 1. This act shall be known and may be cited as the public adjusters licensing act.

Sec. 2. As used in this act:

(a) "Commissioner" means the Kansas commissioner of insurance;

(b) "first party claim" means any claim for loss or damage caused by, or resulting from, any accident, incident or occurrence covered under insurance contracts that insure the real or personal property, or both, of the insured;

(c) "insured" means and includes only the policyholder and any beneficiaries named or otherwise identified in a policy of insurance;

(d) "licensee" means a public adjuster licensed pursuant to this act;

(e) "nonresident adjuster" means an individual who:

(1) Is not a resident of this state;

(2) is a currently licensed or authorized public insurance adjuster in such public adjuster's home state for the type or kinds of insurance for which such public adjuster intends to adjust claims in this state; and

(3) does not maintain an office in this state for the purpose of adjusting claims in this state;

(f) "person" means any individual, partnership or corporation;

(g) "public adjuster" means any individual who, for money, fee, commission or other compensation engages in public adjusting, but such term does not include an adjuster acting on behalf of or representing an insurer; and

(h) "public adjusting" means investigating, appraising or evaluating and reporting to an insured in relation to a first party claim, or otherwise acting in any manner on behalf of or aiding an insured in negotiating for or effecting the settlement of a first party claim. "Public adjusting" shall not include acting in any manner in relation to claims for damages to or arising out of the operation of a motor vehicle, or any activity which may constitute the unauthorized practice of law.

Sec. 3. (a) No public adjuster shall adjust or solicit a contract for the adjustment of any claim for loss or damage on behalf of an insured, except

1 a first party claim.

2 (b) No individual shall act as a public adjuster in this state unless  
3 licensed as a public adjuster as required by this act.

4 (c) No person shall engage in the business of public adjusting unless  
5 licensed as a public adjuster as required by this act.

6 (d) A licensee under this act may act as a public adjuster without any  
7 other license.

8 Sec. 4. (a) Nothing in this act applicable to public adjusters shall  
9 apply to:

10 (1) Any employee, agent or other representative of any authorized  
11 insurer who acts as a claims adjuster; or

12 (2) any licensed insurance agent who is designated by the insurer to  
13 act as an adjuster for a client of such insurance agent without any com-  
14 pensation for those services as adjuster. No insurer's representative and  
15 no licensed insurance agent shall advertise or publicly solicit the adjust-  
16 ment of claims in a manner likely to mislead the public into believing that  
17 such representative or insurance agent is offering to serve as a public  
18 adjuster.

19 (b) Nothing in this act shall apply to:

20 (1) Any attorney admitted to the bar of this state who acts or aids in  
21 adjusting insurance claims as an incident to the practice of the attorney's  
22 profession and who does not advertise such attorney as a public adjuster;

23 (2) any licensed insurance agent who acts as an adjuster with respect  
24 to any loss involving insurance contracts under which such insurance  
25 agent was the broker of record in placing the insurance, whether or not  
26 designated in writing to act for the insured; or

27 (3) any other duly licensed producer who has been designated to act  
28 for the insured in writing before a loss occurs.

29 Sec. 5. The commissioner may issue a public adjuster's license to any  
30 individual who is trustworthy and competent to act as a public adjuster  
31 in a manner as to safeguard the interests of the people of this state and  
32 who has complied with the requirements of this act.

33 Sec. 6. (a) Before any license or any renewal thereof shall be issued  
34 by the commissioner, there shall be filed in the commissioner's office a  
35 written application therefor. The application shall be in the form pre-  
36 scribed by the commissioner and shall contain such information as the  
37 commissioner reasonably may require. Each application for a public ad-  
38 juster's license or for any renewed thereof shall be accompanied by an  
39 application fee of \$300. The commissioner shall refund to the applicant  
40 the application fee if the application is denied.

41 (b) Each applicant shall submit to the commissioner, together with  
42 the application: (1) The applicant's photograph, in duplicate, in pass-  
43 port size; and

1 (2) fingerprints of the applicant's two hands taken on standard fin-  
2 gerprint cards by a state or municipal law enforcement agency. No license  
3 shall be issued to any individual who has ever been convicted of any crime  
4 or offense involving fraud or dishonesty; nor shall a licensee employ any  
5 person who has ever been convicted of any crime or offense involving  
6 fraud or dishonesty. The commissioner is authorized to exchange finger-  
7 print data with and receive criminal history record information from the  
8 federal bureau of investigation and the Kansas bureau of investigation for  
9 use in making the determinations required by this subsection.

10 (c) The commissioner may require an applicant for a license to pres-  
11 ent evidence, in the form the commissioner may prescribe, that the ap-  
12 plicant has been employed, for a period which the commissioner deems  
13 reasonable, by an insurer, an independent adjuster or a public adjuster,  
14 in the performance of duties which, in the commissioner's opinion, would  
15 provide the applicant with satisfactory preliminary training for the duties  
16 and responsibilities which would devolve upon the applicant as a licensee.

17 Sec. 7. (a) Except as otherwise provided in this act, the commissioner  
18 shall require each applicant to take and pass a written examination, in  
19 order to determine the competency of the applicant to act as a public  
20 adjuster. The commissioner is authorized to enter into contracts with  
21 private vendors that are reasonable and necessary in regard to preparing  
22 or administering such examinations.

23 (b) The commissioner, in the commissioner's discretion and on terms  
24 the commissioner may prescribe, may dispense with the examination in  
25 the case of any applicant who:

26 (1) Is a nonresident adjuster holding a public adjuster's license issued  
27 by another state in which the licensing provisions of public adjusters are  
28 substantially similar to the provisions of this act and which similarly rec-  
29 ognizes and accepts public adjusters licensed in Kansas; or

30 (2) previously has operated a public adjusting business in this state.

31 (c) Any applicant for a license who is required to take and pass an  
32 examination shall pay to the commissioner a nonrefundable examination  
33 fee not to exceed \$50 in an amount established by the commissioner  
34 pursuant to duly adopted rules and regulations.

35 Sec. 8. (a) Upon payment of the application fee prescribed by section  
36 6, and amendments thereto, a person who has been employed as or acted  
37 as a public adjuster as such person's principal business for a period of five  
38 years immediately prior to the effective date of this act, and who has  
39 demonstrated such person's trustworthiness and competence to act as a  
40 public adjuster to the satisfaction of the commissioner, shall be granted  
41 a license without examination.

42 (b) Application for a license without examination pursuant to this sec-  
43 tion shall be made to the commissioner within 12 months of the effective

1 date of this act and shall be accompanied by a sworn statement:

2 (1) Describing the experience of the applicant as a public adjuster;  
3 and

4 (2) containing such other information as may be required by the  
5 commissioner.

6 Sec. 9. Every public adjuster's license issued pursuant to this act shall  
7 be valid for four years from the date of its issuance, unless suspended or  
8 revoked, pursuant to section 12, and amendments thereto. A public ad-  
9 juster's license may be renewed upon the filing of an application and  
10 payment of the application fee required by section 6, and amendments  
11 thereto.

12 Sec. 10. No public adjuster's license shall be issued or renewed, un-  
13 less there shall be on file with the commissioner a bond, executed by the  
14 applicant and by approved sureties, in the penal sum of \$10,000 appli-  
15 cable to the licensee. The bond shall be approved as to form by the  
16 attorney general and as to sufficiency of security by the commissioner.  
17 The bond shall be made to the state of Kansas for the use and benefit of  
18 any person injured by a willful, malicious or wrongful act by a public  
19 adjuster in connection with the transaction of such public adjuster's  
20 business.

21 Sec. 11. No licensee shall:

22 (a) Enter into any agreement, oral or written, with an insured to ne-  
23 gotiate or settle any claim for loss or damage occurring in this state be-  
24 tween the hours of 6 p.m. and 8 a.m. during the 24 hours after the loss  
25 or damage has occurred;

26 (b) have any right to compensation from any insured for or on account  
27 of services rendered to an insured as a public adjuster, unless the right  
28 to compensation is based upon a written memorandum in such form and  
29 with such language as the commissioner may prescribe, signed by the  
30 party to be charged and by the public adjuster, and specifying or clearly  
31 defining the services to be rendered and the amount or extent of the  
32 compensation;

33 (c) induce cancellation of a duly executed written memorandum be-  
34 tween an insured and any other public adjuster;

35 (d) make any misrepresentation of facts or advise any person on ques-  
36 tions of law in connection with the transaction of business as a public  
37 adjuster; or

38 (e) receive, accept or hold any moneys towards the settlement of a  
39 claim on behalf of an insured, unless the public adjuster deposits the  
40 moneys in an interest-bearing escrow account in a financial institution in  
41 this state insured by an agency of the federal government. Any funds held  
42 in escrow, together with interest accumulated thereon, shall be the prop-  
43 erty of the insured until disbursement thereof pursuant to a written mem-

1 orandum, as prescribed by subsection (b). In the event of the insolvency  
2 or bankruptcy of a public adjuster, the claim of an insured for any settle-  
3 ment moneys received, accepted or held by the public adjuster shall con-  
4 stitute a statutory trust.

5 Sec. 12. (a) The commissioner may refuse to issue or renew a public  
6 adjuster's license, or may suspend or revoke any public adjuster's license  
7 if, after notice and opportunity for a hearing pursuant to the Kansas ad-  
8 ministrative procedure act, the commissioner determines that the appli-  
9 cant or licensee:

10 (1) Has violated any provisions of the insurance laws of this state,  
11 including any rules and regulations promulgated thereunder, or has vio-  
12 lated any law in the course of such applicant's or licensee's dealings as a  
13 public adjuster;

14 (2) has withheld material information or made a material misstate-  
15 ment in the application for the public adjuster's license;

16 (3) has committed a fraudulent or dishonest act;

17 (4) has demonstrated such applicant's or adjuster's incompetency,  
18 lack of integrity, bad faith, dishonesty, financial irresponsibility or un-  
19 trustworthiness to act as a public adjuster; or

20 (5) has aided, abetted or assisted another person in violating any in-  
21 surance law of this state or any rule and regulation promulgated  
22 thereunder.

23 (b) Any person claiming to be aggrieved by any act or omission of a  
24 public adjuster may file a verified complaint with the commissioner set-  
25 ting forth facts showing sufficient grounds for the suspension or revoca-  
26 tion of the public adjuster's license. Upon the filing of the complaint, the  
27 commissioner shall determine, in accordance with the Kansas adminis-  
28 trative procedure act, whether the public adjuster's license shall be sus-  
29 pended or revoked.

30 Sec. 13. For one year after the revocation is final, including the final  
31 determination of any judicial proceeding affirming the action of the com-  
32 missioner in revoking the public adjuster's license, no individual whose  
33 public adjuster's license has been revoked shall be entitled to the issuance  
34 or renewal of a public adjuster's license.

35 Sec. 14. If an application for a public adjuster's license is denied, or  
36 if any public adjuster's license is suspended or revoked by the commis-  
37 sioner, the commissioner shall forthwith give notice and an opportunity  
38 for a hearing as required by the Kansas administrative procedure act to  
39 the applicant or licensee.

40 Sec. 15. In addition to any other sanctions provided by law, unless  
41 such person knew or reasonably should have known that the act consti-  
42 tuting the offense was a violation of this act, any person violating any  
43 provision of this act shall be liable to a civil penalty of not more than

1 \$2,500 for the first offense and not more than \$5,000 for the second and  
2 each subsequent offense, but not to exceed \$25,000 for the same violation  
3 occurring within any six, consecutive calendar months. For the purposes  
4 of this section, each transaction or statutory violation shall constitute a  
5 separate offense. The commissioner may issue an order to any person  
6 violating any provision of this act assessing a penalty in accordance with  
7 this section. Such order shall be reviewable in a hearing held pursuant to  
8 the Kansas administrative procedure act.

9 Sec. 16. (a) Every license issued pursuant to this act shall at all times  
10 be the property of the state of Kansas and, upon any suspension, revo-  
11 cation, refusal to renew, expiration or other termination of such license,  
12 shall no longer be in force and effect. Upon any suspension, revocation  
13 or other termination of a license, the licensee or other person having  
14 possession or custody of the license shall immediately surrender it to the  
15 commissioner by personal delivery or by registered or certified mail, re-  
16 turn receipt requested.

17 (b) If a license is lost, stolen or destroyed, in lieu of the return of the  
18 license, the commissioner may accept the affidavit of the licensee or other  
19 person responsible for the license, stating the facts of the loss, theft or  
20 destruction of such license.

21 Sec. 17. Any person becoming licensed as a public adjuster under  
22 this act thereby makes an irrevocable appointment, binding upon such  
23 person and the person's executor or administrator, of the secretary of  
24 state of the state of Kansas to be the true and lawful attorney of such  
25 person, upon whom may be served all lawful process in any action, suit  
26 or proceeding in any court by the commissioner or by the state, and upon  
27 whom may be served any notice, order, pleading or process in any ad-  
28 ministrative proceeding before the commissioner which arises out of such  
29 person acting as a public adjuster in this state. Any action taken by such  
30 person to act as a public adjuster in this state shall be a signification of  
31 such person's agreement that any such lawful process in such court action,  
32 suit or proceeding, and any such notice, order, pleading or process in  
33 such administrative proceeding before the commissioner so served, shall  
34 be of the same legal force and validity as personal service of process in  
35 this state upon such person.

36 Sec. 18. The commissioner may promulgate such rules and regula-  
37 tions as may be necessary to effectuate the purposes of this act.

38 Sec. 19. This act shall take effect and be in force from and after its  
39 publication in the statute book.

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