

AMENDED IN ASSEMBLY AUGUST 15, 2005

AMENDED IN ASSEMBLY JULY 6, 2005

AMENDED IN ASSEMBLY JUNE 23, 2005

AMENDED IN SENATE MAY 10, 2005

AMENDED IN SENATE MAY 3, 2005

AMENDED IN SENATE APRIL 19, 2005

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 518

Introduced by Senator Kehoe

February 18, 2005

An act to amend Sections 2051.5, 10089.82, 10106, 14028, 14029, 14035, 14062, 15011, 15027, 15027.1, 15033, 15036, 15040, 15056, and 15059 of, and to add Sections 395, 14028.5, 14061.5, 15018.5, 15027.5, 15028.7, and 15039.5 to, and to repeal Section 15014 of, the Insurance Code, relating to homeowners' insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 518, as amended, Kehoe. Homeowners' insurance: insurance adjusters.

Existing law generally regulates insurance, including homeowners' and other insurance relating to real and personal property.

This bill would require an insurer, *after a covered loss*, to provide, free of charge, a complete copy of ~~an~~ *the* insured's current insurance policy or certificate within 30 calendar days of receipt of a request from the insured. *It would provide that an insured who does not experience a covered loss shall be entitled to one free copy of his or her current insurance policy or certificate annually.*

Existing law prohibits an insurer, with respect to certain homeowners' insurance policies, from placing upon an insured a time limit of less than 12 months from the date that the first payment toward the actual cash value is made in order for the insured to collect the full replacement cost of the loss, subject to the policy limit.

This bill would require an insurer, as of January 1, 2007, in the event of a covered loss relating to a state of emergency, as defined, to extend coverage for additional living expenses for a period of up to 24 months. It would prohibit a policy from including a provision that limits the maximum coverage for additional living expenses to a time period of less than 24 months. The bill would provide that the extension shall not act to increase additional living expense amount policy limits.

Existing law requires an insurer under a homeowners' insurance policy to provide certain disclosures to an insured. Existing law allows the commissioner, with respect to one of these disclosures, to modify that disclosure only upon the request of an insurer.

This bill would apply this limitation on modification to other disclosures, as specified.

Existing law requires an applicant for a license to act as a public insurance adjuster to meet specified requirements, including passing a licensing examination and posting a surety bond or cash in the sum of \$5,000. Existing law provides that the examination requirement is waived for specified applicants.

This bill would raise the required amount of the bond or cash to \$20,000. It would delete the provision providing for waiver of the examination requirement for certain applicants.

Existing law sets forth the grounds for denying, suspending, or revoking a license to act as an insurance adjuster or public insurance adjuster.

This bill would make specified changes to the grounds for denying, suspending, or revoking those licenses.

Existing law requires that a contract between a public insurance adjuster and a client include specified provisions and information.

This bill would require that certain additional information relating to the insured, the insurer, and the adjuster be included in such a contract, and would prohibit a contract of this type from containing specified provisions. It would require that a public insurance adjuster provide the client with a written disclosure prior to the signing of the

contract, as specified. The bill would make certain changes to the duties owed by the adjuster to the client.

Existing law provides that, if a client cancels a contract with a public insurance adjuster, the adjuster is not entitled to receive compensation for services performed prior to the cancellation.

This bill would allow a public insurance adjuster to receive reimbursement for out-of-pocket emergency expenses paid for the client prior to cancellation if the adjuster provides the client with a specified statement.

The bill would impose additional regulatory requirements on public insurance adjusters relating to disclosures and receiving money on behalf of an insured.

Existing law allows an expired public adjuster’s license or branch office certificate to be renewed within 5 years of its expiration if certain requirements are met.

This bill would instead provide that an expired license or certificate may be renewed within one year of its expiration if those conditions are met.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 395 is added to the Insurance Code, to
- 2 read:
- 3 395. ~~An~~ *After a covered loss, an insurer shall provide, free of*
- 4 *charge, a complete copy of* ~~an~~ *the insured’s current insurance*
- 5 *policy or certificate within 30 calendar days of receipt of a*
- 6 *request from the insured. The time period for providing the*
- 7 *insurance policy or certificate may be extended by the*
- 8 *commissioner. An insured who does not experience a covered*
- 9 *loss shall be entitled to one free copy of his or her current*
- 10 *insurance policy or certificate annually. The insurance policy or*
- 11 *certificate provided to the insured shall include, where*
- 12 *applicable, the policy declarations page. This section shall not*
- 13 *apply to commercial policies issued pursuant to Sections 675.5*
- 14 *and 675.6, and policies of workers’ compensation insurance, as*
- 15 *defined in Section 109.*
- 16 SEC. 2. Section 2051.5 of the Insurance Code is amended to
- 17 read:

1 2051.5. (a) Under an open policy that requires payment of
2 the replacement cost for a loss, the measure of indemnity is the
3 amount that it would cost the insured to repair, rebuild, or replace
4 the thing lost or injured, without a deduction for physical
5 depreciation, or the policy limit, whichever is less.

6 If the policy requires the insured to repair, rebuild, or replace
7 the damaged property in order to collect the full replacement
8 cost, the insurer shall pay the actual cash value of the damaged
9 property, as defined in Section 2051, until the damaged property
10 is repaired, rebuilt, or replaced. Once the property is repaired,
11 rebuilt, or replaced, the insurer shall pay the difference between
12 the actual cash value payment made and the full replacement cost
13 reasonably paid to replace the damaged property, up to the limits
14 stated in the policy.

15 (b) (1) Except as provided in paragraph (2), no time limit of
16 less than 12 months from the date that the first payment toward
17 the actual cash value is made shall be placed upon an insured in
18 order to collect the full replacement cost of the loss, subject to
19 the policy limit. Additional extensions of six months shall be
20 provided to policyholders for good cause. In the event of a loss
21 relating to a “state of emergency,” as defined in Section 8558 of
22 the Government Code, no time limit of less than 24 months from
23 the date that the first payment toward the actual cash value is
24 made shall be placed upon the insured in order to collect the full
25 replacement cost of the loss, subject to the policy limit. Nothing
26 in this section shall prohibit the insurer from allowing the insured
27 additional time to collect the full replacement cost.

28 (2) In the event of a covered loss relating to a state of
29 emergency, as defined in Section 8558 of the Government Code,
30 coverage for additional living expenses shall be extended for a
31 period up to 24 months from the date of loss and subject to other
32 policy provisions. A policy may not include a provision that
33 limits the maximum coverage for additional living expenses to a
34 time period of less than 24 months. This extension shall not act to
35 increase the additional living expense policy limits in force at the
36 time of the loss. This paragraph shall become operative on
37 January 1, 2007.

38 (c) In the event of a total loss of the insured structure, no
39 policy issued or delivered in this state may contain a provision
40 that limits or denies payment of the replacement cost in the event

1 the insured decides to rebuild or replace the property at a location
2 other than the insured premises. However, the measure of
3 indemnity shall be based upon the replacement cost of the
4 insured property and shall not be based upon the cost to repair,
5 rebuild, or replace at a location other than the insured premises.

6 (d) Nothing in this section shall prohibit an insurer from
7 restricting payment in cases of suspected fraud.

8 (e) The changes made to this section by the act that added this
9 subdivision shall be implemented by an insurer on and after the
10 effective date of that act, except that an insurer shall not be
11 required to modify policy forms to be consistent with those
12 changes until July 1, 2005. On and after July 1, 2005, all policy
13 forms used by an insurer shall reflect those changes.

14 SEC. 3. Section 10089.82 of the Insurance Code is amended
15 to read:

16 10089.82. (a) An insured may not be required to use the
17 department's mediation process. An insurer may not be required
18 to use the department's mediation process, except as provided in
19 Section 10089.75.

20 (b) Neither the insurer nor the insured is required to accept an
21 agreement proposed during the mediation.

22 (c) If the parties agree to a settlement agreement, the insured
23 will have three business days to rescind the agreement.
24 Notwithstanding Chapter 2 (commencing with Section 1115) of
25 Division 9 of the Evidence Code, if the insured rescinds the
26 agreement, it may not be admitted in evidence or disclosed unless
27 the insured and all other parties to the agreement expressly agree
28 to its disclosure. If the agreement is not rescinded by the insured,
29 it is binding on the insured and the insurer, and acts as a release
30 of all specific claims for damages known at the time of the
31 mediation presented and agreed upon in the mediation
32 conference. If counsel for the insured is present at the mediation
33 conference and a settlement is agreed upon that is signed by the
34 insured's counsel, the agreement is immediately binding on the
35 insured and may not be rescinded.

36 (d) This section does not affect rights under existing law for
37 claims for damage that were undetected at the time of the
38 settlement conference.

39 (e) All settlements reached as a result of department-referred
40 mediation shall address only those issues raised for the purpose

1 of resolution. Settlements and any accompanying releases are not
2 effective to settle or resolve any claim or dispute not addressed
3 by the mediator for the purpose of resolution, nor any claim that
4 the insured may have related to the insurer's conduct in handling
5 the claim. However, for mediations conducted pursuant to
6 subdivision (b) of Section 10089.70, the insurer and insured may
7 agree to a complete settlement and release of all disputes related
8 to the claim, including any claim the insured may have related to
9 the insurer's conduct in handling the claim, provided the legal
10 effect of the release is disclosed and fully explained to the
11 claimant by the mediator.

12 Referral to mediation or the pendency of a mediation under this
13 article is not a basis to prevent or stay the filing of civil litigation
14 arising in whole or in part out of the same facts. Any applicable
15 statute of limitations or limitation on the insured's right to sue as
16 set forth in Section 2071 is tolled for the number of days
17 beginning from the notification date to the insurer pursuant to
18 Section 10089.72, until the date on which the mediation is either
19 completed or declined, or the date on which the insured fails to
20 appear for a scheduled mediation for the second time, or, in the
21 event that a settlement is completed, the expiration of any
22 applicable three business day cooling off period.

23 SEC. 4. Section 10106 of the Insurance Code is amended to
24 read:

25 10106. The Insurance Commissioner may modify a
26 disclosure statement as contained in Section 10102, 10103, or
27 10103.5 only upon request of an insurer. The modification shall
28 only be for the purpose of adding new or clarifying existing
29 language describing any form of dwelling coverage offered by an
30 insurer. The commissioner's authority to modify the disclosure
31 statement shall be limited solely to determining the clarity and
32 accuracy of the information provided in the disclosure to ensure
33 that the disclosure accurately reflects a new or existing product.
34 It is the intent of the Legislature that the disclosure form be kept
35 as brief as clarity and accuracy permit. Any modification to the
36 disclosure statement shall be approved in writing by the
37 commissioner.

38 SEC. 5. Section 14028 of the Insurance Code is amended to
39 read:

1 14028. After a hearing the commissioner may deny a license
2 unless the application makes a showing satisfactory to the
3 commissioner that the applicant, if an individual, has not, or if
4 the applicant is a person other than an individual, that its
5 manager and each of its officers and partners have not:

6 (a) Committed any acts or crimes constituting grounds for
7 denial of licensure under Section 480 of the Business and
8 Professions Code.

9 (b) Been refused a license under this chapter or had a license
10 revoked.

11 (c) Been an officer, partner, or manager of any person who has
12 been refused a license under this chapter or whose license has
13 been revoked.

14 (d) While unlicensed committed, or aided and abetted the
15 commission of, any act for which a license is required by this
16 chapter.

17 (e) Committed any act or crime constituting grounds for denial
18 of license under Section 1668.

19 SEC. 6. Section 14028.5 is added to the Insurance Code, to
20 read:

21 14028.5. The commissioner may, without hearing, deny a
22 license if the applicant has committed any act or crime
23 constituting grounds for denial of license under Section 1669.

24 SEC. 7. Section 14029 of the Insurance Code is amended to
25 read:

26 14029. (a) The business of each licensee shall be operated
27 under the active direction, control, charge, or management, in
28 this state, of the licensee, if the licensee is qualified, or the person
29 who has qualified to act as the licensee's manager, if the licensee
30 is not qualified.

31 (b) No person shall act as a manager of a licensee until he or
32 she has complied with each of the following:

33 (1) Demonstrated his or her qualifications by a written or oral
34 examination, or a combination of both, if required by the
35 commissioner.

36 (2) Made a satisfactory showing to the commissioner that he
37 or she has the qualifications prescribed by Section 14025 and that
38 none of the facts stated in Section 14028 or 14028.5 exist as to
39 him or her.

1 (c) If the manager, who has qualified as provided in this
2 section, ceases for any reason whatsoever to be connected with
3 the licensee to whom the license is issued, the licensee shall
4 notify the commissioner in writing 30 days from the cessation. If
5 notice is given, the license shall remain in force for a reasonable
6 length of time to be determined by the rules of the commissioner
7 pending the qualifications, as provided in this chapter, of another
8 manager. If the licensee fails to notify the commissioner within
9 the 30-day period, his or her license shall be subject to
10 suspension or revocation and may be reinstated only upon the
11 filing of an application for reinstatement, payment of the
12 reinstatement fee, if any is due, and the qualification of a
13 manager as provided herein.

14 (d) Every manager shall renew his or her authority by
15 satisfying the requirements of Article 8 (commencing with
16 Section 14090).

17 SEC. 8. Section 14035 of the Insurance Code is amended to
18 read:

19 14035. A licensee shall, within 30 days after such change,
20 notify the department of any change of his or her address and of
21 any change in the officers or partners of such licensee. The
22 principal place of business may be at a home or at a business
23 address, but it shall be the place at which the licensee maintains a
24 permanent office.

25 Applications, on forms prescribed by the commissioner, shall
26 be submitted by all new officers or partners. The commissioner
27 may suspend or revoke a license issued under this chapter if he or
28 she determines that at the time the person became an officer or
29 partner of a licensee, any of the facts stated in Section 14028 or
30 14028.5 existed as to such person.

31 SEC. 9. Section 14061.5 is added to the Insurance Code, to
32 read:

33 14061.5. The commissioner may, without hearing, suspend or
34 revoke a license issued under this chapter, or may issue a
35 restricted license, if he or she determines that the licensee has
36 committed any act or crime constituting grounds for denial of
37 license under Section 14028.5.

38 SEC. 10. Section 14062 of the Insurance Code is amended to
39 read:

1 14062. The record of conviction, or a certified copy thereof,
2 shall be conclusive evidence of the conviction, as that term is
3 used in this article or in Section 14028 or 14028.5.

4 A plea or verdict of guilty or a conviction following a plea of
5 nolo contendere is deemed to be a conviction within the meaning
6 of this article or of Section 14028 or 14028.5. The commissioner
7 may order the license suspended or revoked, or may decline to
8 issue a license, when the time for appeal has elapsed, or the
9 judgment of conviction has been affirmed on appeal or when an
10 order granting probation is made suspending the imposition of
11 sentence, irrespective of a subsequent order under the provisions
12 of Section 1203.4 of the Penal Code allowing such person to
13 withdraw his or her plea of guilty and to enter a plea of not
14 guilty, or setting aside the verdict of guilty, or dismissing the
15 accusation, information, or indictment.

16 SEC. 11. Section 15011 of the Insurance Code is amended to
17 read:

18 15011. Before an application for a license is granted, the
19 applicant shall meet all of the following:

- 20 (a) Be at least 18 years of age.
- 21 (b) Be a bona fide resident of the State of California.
- 22 (c) Must be of good character and shall not have committed
23 acts or crimes constituting grounds for denial of licensure under
24 Section 1668 or 1669.
- 25 (d) Shall have had sufficient experience, or special education
26 or training, or both, in the handling of loss claims under
27 insurance contracts as determined by regulations adopted by the
28 commissioner, and is competent to transact business and
29 discharge the responsibilities of a public insurance adjuster in
30 such a manner as to safeguard the interests of the public.
- 31 (e) Must maintain an office in the State of California with
32 public access during regular business hours.
- 33 (f) Pass an exam given by the commissioner in regard to
34 property loss adjusting.
- 35 (g) Post a surety bond executed by a surety company
36 authorized to do business in this state in the sum of twenty
37 thousand dollars (\$20,000).
- 38 (h) Comply with any other qualifications as required by the
39 commissioner.

40 SEC. 12. Section 15014 of the Insurance Code is repealed.

1 SEC. 13. Section 15018.5 is added to the Insurance Code, to
2 read:

3 15018.5. The commissioner may, without hearing, deny an
4 application if the applicant has committed any act or been
5 convicted of a crime constituting grounds for denial of license
6 under Section 1669.

7 SEC. 14. Section 15027 of the Insurance Code is amended to
8 read:

9 15027. (a) No licensee shall, directly or indirectly, act within
10 this state as a public insurance adjuster without having first
11 entered into a contract, in writing, on a form approved by the
12 insurance commissioner and executed in duplicate by the public
13 adjuster and the insured or a duly authorized representative. One
14 original contract shall be kept on file by the licensee, available at
15 all times for inspection, without notice, by the commissioner or
16 his or her duly authorized representative, and one original
17 contract shall be given to the insured.

18 (b) The written contract between the licensee and the insured
19 shall contain each of the following:

- 20 (1) Title of “Public Adjuster Contract.”
- 21 (2) The name, business name, license number, telephone
22 number, and address of the licensee.
- 23 (3) The name and address of the insured.
- 24 (4) A description of the loss and its location, if applicable.
- 25 (5) The name of the insurer and the policy number, if known.
- 26 (6) The full salary, fee, commission, or other consideration the
27 licensee is to receive for services under the contract.
- 28 (7) A description of the services to be provided to the insured.
- 29 (8) Signatures of the licensee and the insured.
- 30 (9) The date the contract was signed by the licensee and the
31 date the contract was signed by the insured.
- 32 (10) The following statement: “As a public adjuster, I am
33 required by the California Insurance Code to post a surety bond
34 in the sum of \$20,000 to cover certain kinds of claims made by
35 you, the insured. If you have any questions concerning the surety
36 bond, you may contact the California Department of Insurance
37 Producer Licensing Call Center at 1-800-967-9331 or
38 www.insurance.ca.gov.”

1 (11) A statement of the compensation to the licensee,
2 including the percentage and base to which the percentage
3 applies.

4 (12) A statement that the insured has the right to rescind the
5 contract within three business days of signing it.

6 (c) A contract covered by this section shall not contain a
7 contract term that does any of the following:

8 (1) Allows the licensee’s fee to be collected when money is
9 due from an insurer, but not paid, or allows a licensee to collect
10 the entire fee from the first payment issued by an insurer, rather
11 than as a percentage of each payment issued by an insurer.

12 (2) Requires the insured to authorize an insurer to issue a
13 payment only in the name of the licensee.

14 (3) Imposes late fees or collection costs on the insured.

15 (d) No licensee shall solicit or attempt to solicit a client for
16 employment during the progress of a loss-producing occurrence.

17 (e) No licensee or any other person or entity offering, for a fee,
18 service regulated by this chapter shall solicit a client for
19 employment or initiate any contract with a policyholder between
20 the hours of 6 p.m. and 8 a.m.

21 (f) No licensee shall use any form of contract other than that
22 approved by the commissioner and which contains each of the
23 following:

24 (1) A provision allowing the client to rescind the contract by
25 written notice sent or delivered by certified mail, return receipt
26 requested, or other form of mailing which provides proof of
27 mailing, to the licensee by midnight of the third business day
28 after the day on which the client signs a contract which complies
29 with this section. Each copy of the contract shall contain a
30 completed form, captioned “Notice of Cancellation,” which shall
31 be placed at the end of the contract and be separated from the
32 remainder of the contract by a printed line. Nothing shall be
33 printed on the reverse side of the notice form. The notice form
34 shall be completed by the licensee, and shall contain in type of at
35 least 10-point the following statement written in the same
36 language, e.g., Spanish, as used in the contract:

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38 Notice of Cancellation
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(Date of Contract)

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You may cancel this contract within three business days from the above date without any penalty or obligation to pay your public adjuster, other than for reimbursement of moneys paid by your public adjuster for out-of-pocket emergency expenses for you or on your behalf. If your public adjuster seeks reimbursement from you for out-of-pocket emergency expenses, your public adjuster shall provide you with an itemized statement of those emergency expenses advanced to you or on your behalf if the cancellation is made within the first three business days after the contract was initiated. Nothing in this contract permits your public adjuster to recover any costs, except for out-of-pocket emergency expenses advanced to you.

If you cancel, any money or other consideration paid by you will be returned within five business days following the receipt of your cancellation notice, and any security interest arising out of the transaction will be canceled.

To cancel this contract, mail or deliver by certified mail, return receipt requested, or other form of mailing which provides proof of mailing, a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to:

(name of public adjuster)

at

(address of public adjuster’s place of business)

not later than midnight of _____
(Date)

I hereby cancel this contract _____
(Date)

(Client’s signature)

(2) The statement “WE REPRESENT THE INSURED ONLY” prominently displayed in at least 10-point type.

(3) A provision disclosing the percentage of the insured’s claim, or other fee, that the licensee will charge for his or her

1 services. The licensee shall obtain the initials of the insured next
2 to this provision.

3 (4) A conspicuous statement in at least 10-point type in
4 immediate proximity to the space reserved for the client's
5 signature, as follows: "You may cancel this contract at any time
6 before midnight of the third business day after the date of this
7 contract. See the notice of cancellation form at the end of this
8 contract for an explanation of this right."

9 (g) No licensee shall knowingly make any false report to his or
10 her employer or divulge to any other person, except as he or she
11 may be required by law to do so, any information acquired by
12 him or her except at the direction of the employer or a client for
13 whom the information is obtained.

14 (h) No licensee shall use a badge in connection with the
15 official activities of the licensee's business.

16 (i) No licensee shall permit an employee or agent in his or her
17 own name to advertise, engage clients, furnish reports, or present
18 bills to clients, or in any manner whatever to conduct business
19 for which a license is required under this chapter.

20 (j) Pursuant to subdivisions (a) and (c) of Section 15006, the
21 commissioner shall have the authority to enforce the provisions
22 of this chapter and prosecute violations thereunder committed by
23 unlicensed persons or entities that hold themselves out or act as
24 public insurance adjusters.

25 (k) For purposes of this section, "business day" shall have the
26 same meaning given to that term in subdivision (e) of Section
27 1689.5 of the Civil Code, as in effect on the operative date of this
28 statute.

29 (l) The contract and the notice of cancellation set forth in
30 paragraph (1) of subdivision (f) shall be written in the same
31 language, e.g., Spanish, as principally used in the negotiation of
32 the contract.

33 (m) Within five business days after a contract has been
34 canceled, the licensee shall tender to the client any payments
35 made by the client and any note or other evidence of
36 indebtedness, including an itemized statement of all amounts
37 tendered to the client.

38 (n) The licensee is not entitled to compensation for services
39 performed prior to cancellation, other than for reimbursement of
40 moneys paid by the licensee for out-of-pocket emergency

1 expenses for the client or on behalf of the client. If the licensee
2 seeks reimbursement from the client for out-of-pocket emergency
3 expenses, and if the cancellation is made within the first three
4 business days after the contract was initiated, the licensee shall
5 provide the client with an itemized statement of those emergency
6 expenses advanced to the client or on behalf of the client by the
7 licensee. Nothing in this subdivision shall permit the licensee to
8 recover any costs, except for out-of-pocket emergency expenses
9 advanced to the client.- Any security interest shall be canceled
10 upon cancellation of the contract.

11 (o) Notice of cancellation given by the client need not take the
12 particular form specified in paragraph (1) of subdivision (f).
13 Notice of cancellation, however expressed, is effective if it
14 indicates the intention of the client not to be bound by the
15 contract.

16 (p) Cancellation occurs when the client gives written notice of
17 cancellation by certified mail, return receipt requested, or other
18 form of mailing which provides proof of mailing, to the licensee
19 at the address specified in the contract.

20 (q) Notice of cancellation, if given by mail, is effective when
21 sent by certified mail, return receipt requested, or other form of
22 mailing which provides proof of mailing, properly addressed
23 with postage prepaid.

24 (r) Until the licensee has complied with this section, the client
25 may cancel the contract.

26 (s) The contracts shall be executed in duplicate. The licensee
27 shall retain one original contract, and shall provide the insured
28 with an original contract.

29 (t) The licensee shall provide the client with an original
30 contract and notice of cancellation at the time the client signs the
31 contract.

32 (u) Any confession of judgment or waiver of the provisions of
33 this chapter shall be deemed contrary to public policy and shall
34 be void and unenforceable.

35 (v) Prior to the signing of the contract, the licensee shall
36 provide the insured with a separate printed disclosure document
37 in the following form that bears the name and license number of
38 the licensee:

39
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“DISCLOSURE

1
2 There are three types of insurance adjusters that could be
3 involved in the processing of your insurance claim. The
4 definitions of the three types are as follows:

5 (1) Public adjusters means the insurance adjusters who do not
6 work for your insurance company. They work for you, the
7 insured, to assist in the preparation, presentation, and settlement
8 of your claim. You hire them by signing a contract and agreeing
9 to pay them a fee or commission based on a percentage of the
10 settlement, or other method of compensation. Public adjusters are
11 required to be licensed, bonded, and tested by the State of
12 California to represent your interest only.

13 (2) Company adjusters means the insurance adjusters who are
14 employees of your insurance company. They represent your
15 insurance company and are paid by your insurance company.
16 They will not charge you a fee and are not individually licensed
17 or tested by the State of California.

18 (3) Independent adjusters means the insurance adjusters who
19 are hired on a contract basis by your insurance company to
20 represent the company in the settlement of the claim. They are
21 paid by your insurance company. They will not charge you a fee.

22 You have the right, but are not required, to use the services of
23 a public adjuster in the preparation and handling of your
24 insurance claim.

25 Public adjusters cannot solicit your business while the loss is
26 underway, or between the hours of 6 p.m. and 8 a.m.

27 Your “Public Adjuster Contract,” with a public adjuster
28 representing you, should clearly indicate the amount of the fee
29 you will be paying to your public adjuster. Your contract, with
30 this fee percentage, should be acknowledged by your initials on
31 the “Public Adjuster Contract.” The salary, fee, commission, or
32 other consideration is to be paid by you (the insured), not the
33 insurance company (insurer).

34 You have the right to cancel the contract with your public
35 adjuster, without any penalty or obligation, within three business
36 days from the date the contract is signed.

37 If you cancel the contract with your public adjuster, any money
38 or other consideration paid by you will be returned within five
39 business days following the receipt of your cancellation notice,

1 and any security interest arising out of the transaction will be
2 canceled.

3 To cancel the contract with your public adjuster, mail or
4 deliver by certified mail, return receipt requested, or other form
5 of mailing which provides proof of mailing, a signed and dated
6 copy of the cancellation notice, or any other written notice, or
7 send a telegram to the public adjuster at the address in the
8 contract.

9 You have the right to, and may, communicate with your
10 insurance company at any time if you feel the need during the
11 claims process.

12 If you have any concerns or questions, the officers at the
13 California Department of Insurance Consumer Hotline are there
14 to help you. Please call them at 1-800-927-HELP (4357), or
15 www.insurance.ca.gov.”

16

17 (w) No later than three business days after the cancellation has
18 expired, the public adjuster shall notify the insurer, its adjuster,
19 or its attorney, that he or she has entered into a written contract
20 with the insured.

21 (x) If the licensee misrepresents or conceals a material fact
22 from the insured prior to execution of the contract, the insured is
23 entitled to rescind the contract without time limit.

24 SEC. 15. Section 15027.1 of the Insurance Code is amended
25 to read:

26 15027.1. (a) Notwithstanding subdivision (e) of Section
27 15027, a licensee shall not solicit a contract of engagement for
28 residential properties under this chapter until seven calendar days
29 have elapsed after the occurrence of a ~~disaster~~ covered loss.

30 (b) Subdivision (a) shall not apply if the licensee is contacted
31 directly by the insured or the insured’s representative.

32 ~~(e) For the purposes of this section, “disaster” means a~~
33 ~~loss-producing event that damages or destroys more than 25~~
34 ~~dwellings, or a “disaster” as that term is defined in subdivision~~
35 ~~(b) of Section 1689.14 of the Civil Code.~~

36 SEC. 16. Section 15027.5 is added to the Insurance Code, to
37 read:

38 15027.5. Any person acting as a public adjuster who has
39 executed a contract as described in Section 15027 is the agent of
40 the insured. While acting under the authority of such a contract, a

1 public adjuster may not receive any fees or other consideration,
2 monetary or otherwise, from either the insured or any other
3 source, in excess of the amount or percentage provided in the
4 contract. Any compensation received by the public adjuster from
5 any party or any other source connected to the claim adjustment,
6 including any contractor, insurer, or vendor, shall be disclosed by
7 the public adjuster to the insured. The insured may rescind the
8 contract if the adjuster fails to make the required disclosure or if
9 the public adjuster's receipt of any compensation from a third
10 party conflicts with the interests of the insured.

11 SEC. 17. Section 15028.7 is added to the Insurance Code, to
12 read:

13 15028.7. (a) A public adjuster who receives, accepts, or
14 holds any funds on behalf of an insured towards the settlement of
15 a claim for loss or damage shall deposit the funds in a
16 non-interest bearing escrow or trust account in a financial
17 institution that is insured by an agency of the federal government
18 in the adjuster's home state or the state where the loss occurred.

19 (b) All funds held in an escrow or trust account shall be the
20 property of the insured and shall be held pursuant to a written
21 contract signed by the insured and the public adjuster.

22 (c) A public adjuster who receives any fiduciary funds shall,
23 within 15 business days of receipt, deposit the funds in the
24 escrow account and provide a written statement to the insured
25 showing the amount of funds received and deposited in escrow.

26 (d) A public adjuster who, after reasonable diligence, is unable
27 to obtain the endorsements of all payees designated on any bank
28 draft representing fiduciary funds, *or who receives a written*
29 *statement from the insured indicating that he or she does not*
30 *wish to establish an escrow or trust account*, shall be exempt
31 from the requirements of subdivisions (a) to (c), inclusive.

32 (e) The endorsement by a payee designated on any bank draft
33 representing fiduciary funds shall not be construed as a waiver of
34 any potential right of the payee to dispute the public adjuster's
35 entitlement to those funds or any portion thereof.

36 SEC. 18. Section 15033 of the Insurance Code is amended to
37 read:

38 15033. No license shall be issued under this chapter unless
39 the applicant files with the commissioner a surety bond executed
40 by a surety company authorized to do business in the state in the

1 sum of twenty thousand dollars (\$20,000) conditioned for the
2 faithful and honest conduct of business by the applicant. The
3 bond, as to its form, execution, and sufficiency of the surety shall
4 be approved by the commissioner.

5 SEC. 19. Section 15036 of the Insurance Code is amended to
6 read:

7 15036. In lieu of the surety bond required by this chapter
8 there may be deposited with the State of California the sum of
9 twenty thousand dollars (\$20,000) in cash, or evidence of deposit
10 of the sum of twenty thousand dollars (\$20,000) in banks
11 authorized to do business in this state and insured by the Federal
12 Deposit Insurance Corporation, or investment certificates or
13 share accounts in the amount of twenty thousand dollars
14 (\$20,000) issued by a savings association doing business in this
15 state and insured by the Federal Deposit Insurance Corporation,
16 or evidence of a certificate of funds or share account of the sum
17 of twenty thousand dollars (\$20,000) in a credit union as defined
18 in Section 14000 of the Financial Code whose share deposits are
19 guaranteed by the National Credit Union Administration or
20 guaranteed by any other agency approved by the Department of
21 Financial Institutions.

22 SEC. 20. Section 15039.5 is added to the Insurance Code, to
23 read:

24 15039.5. The commissioner may, without hearing, suspend or
25 revoke a license issued under this chapter if he or she determines
26 that the licensee has committed any act or crime constituting
27 grounds for denial of license under Section 15018.5.

28 SEC. 21. Section 15040 of the Insurance Code is amended to
29 read:

30 15040. The record or conviction, or a certified copy thereof,
31 shall be conclusive evidence of the conviction as that term is
32 used in this article or in Section 15018 or 15018.5.

33 A plea or verdict of guilty or a conviction following a plea of
34 nolo contendere is deemed to be a conviction within the meaning
35 of this article or of Section 15018 or 15018.5. The commissioner
36 may order the license suspended or revoked, or may decline to
37 issue a license, when the time for appeal has elapsed, or the
38 judgment of conviction has been affirmed on appeal or when an
39 order granting probation is made suspending the imposition of
40 sentence, irrespective of a subsequent order under the provisions

1 of Section 1203.4 of the Penal Code allowing that person to
2 withdraw his or her plea of guilty and enter a plea of not guilty,
3 or setting aside the verdict of guilty, or dismissing the accusation,
4 information, or indictment.

5 SEC. 22. Section 15056 of the Insurance Code is amended to
6 read:

7 15056. Except as otherwise provided in this article, an
8 expired license or branch office certificate may be renewed at
9 any time within one year after its expiration on the filing of an
10 application for renewal on a form prescribed by the
11 commissioner, and the payment of a renewal fee in effect on the
12 last preceding regular renewal date. If the license or certificate is
13 renewed more than 30 days after its expiration, the licensee, as a
14 condition precedent to renewal, shall also pay the delinquency
15 fee prescribed by this chapter. Renewal under this section shall
16 be effective on the date on which the application is filed, on the
17 date on which the renewal fee is paid, or on the date on which the
18 delinquency fee, if any, is paid, whichever last occurs. If so
19 renewed, the license or certificate shall continue in effect through
20 the date provided in Section 15044 which next occurs after the
21 effective date of the renewal, when it shall expire if it is not again
22 renewed.

23 Renewal of a license or certificate shall not prohibit the
24 bringing of disciplinary proceedings for an act committed before
25 the effective date of the renewal.

26 SEC. 23. Section 15059 of the Insurance Code is amended to
27 read:

28 15059. A license or branch office certificate which is not
29 renewed within one year after its expiration may not be renewed,
30 restored, reinstated, or reissued thereafter.

31 The holder of the license or certificate may obtain a new
32 license or certificate only on compliance with all of the
33 provisions of this chapter relating to the issuance of an original
34 license or certificate.

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