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HOUSE BILL 13-1062

BY REPRESENTATIVE(S) Ginal, Fields, Fischer, Hamner, Hullinghorst, Labuda, Levy, Pabon, Pettersen, Schafer, Williams, Young, Court, McLachlan, Mitsch Bush, Moreno, Rosenthal, Ryden, Vigil;
also SENATOR(S) Kefalas, Aguilar, Guzman.

CONCERNING INCREASED REGULATION OF PUBLIC INSURANCE ADJUSTERS BY
THE COMMISSIONER OF INSURANCE.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 10-2-103, **amend** (1), (6), (7.9), and (11); and **add** (1.5) and (8.5) as follows:

10-2-103. Definitions. As used in this article, unless the context otherwise requires:

(1) ~~"Commissioner" means the commissioner of insurance~~
"CATASTROPHIC DISASTER" MEANS AN EVENT, AS DECLARED BY THE PRESIDENT OF THE UNITED STATES OR THE GOVERNOR, OR BOTH, WHICH RESULTS IN LARGE NUMBERS OF DEATHS OR INJURIES; CAUSES EXTENSIVE DAMAGE OR DESTRUCTION OF PROPERTY OR FACILITIES THAT PROVIDE AND SUSTAIN HUMAN NEEDS; PRODUCES AN OVERWHELMING DEMAND ON STATE AND LOCAL RESPONSE RESOURCES AND MECHANISMS; CAUSES A SEVERE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

LONG-TERM EFFECT ON GENERAL ECONOMIC ACTIVITY; OR SEVERELY AFFECTS STATE, LOCAL, AND PRIVATE SECTOR CAPABILITIES TO BEGIN AND SUSTAIN RESPONSE ACTIVITIES.

(1.5) "COMMISSIONER" MEANS THE COMMISSIONER OF INSURANCE.

(6) "Insurance producer" or "producer", except as otherwise provided in section 10-2-105, means:

(a) A person who solicits, negotiates, effects, procures, delivers, renews, continues, or binds:

(I) POLICIES OF INSURANCE FOR RISKS RESIDING, LOCATED, OR TO BE PERFORMED IN THIS STATE;

(II) Membership in a prepayment plan as defined in parts 2 and 3 of article 16 of this title; or

(III) Membership enrollment in a health care plan as defined in part 4 of article 16 of this title; AND

(b) A PUBLIC ADJUSTER.

(7.9) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, if the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers OR ACTS AS A PUBLIC ADJUSTER.

(8.5) "PUBLIC ADJUSTER" MEANS ANY PERSON WHO, FOR COMPENSATION OR ANY OTHER THING OF VALUE ON BEHALF OF THE INSURED:

(a) ACTS OR AIDS, SOLELY IN RELATION TO FIRST-PARTY CLAIMS ARISING UNDER INSURANCE CONTRACTS THAT INSURE THE REAL OR PERSONAL PROPERTY OR ALLIED LINES OF THE INSURED, ON BEHALF OF AN INSURED IN NEGOTIATING FOR, OR EFFECTING, THE SETTLEMENT OF A CLAIM FOR LOSS OR DAMAGE COVERED BY AN INSURANCE CONTRACT;

(b) ADVERTISES FOR EMPLOYMENT AS A PUBLIC ADJUSTER OF INSURANCE CLAIMS OR SOLICITS BUSINESS OR REPRESENTS HIMSELF OR HERSELF TO THE PUBLIC AS A PUBLIC ADJUSTER OF FIRST-PARTY INSURANCE CLAIMS FOR LOSSES OR DAMAGES ARISING OUT OF POLICIES OF INSURANCE THAT INSURE REAL OR PERSONAL PROPERTY OR ALLIED LINES; OR

(c) DIRECTLY OR INDIRECTLY SOLICITS BUSINESS, INVESTIGATES OR ADJUSTS LOSSES, OR ADVISES AN INSURED ABOUT FIRST-PARTY CLAIMS FOR LOSSES OR DAMAGES ARISING OUT OF POLICIES OF INSURANCE THAT INSURE REAL OR PERSONAL PROPERTY OR ALLIED LINES FOR ANOTHER PERSON ENGAGED IN THE BUSINESS OF ADJUSTING LOSSES OR DAMAGES COVERED BY AN INSURANCE POLICY FOR THE INSURED.

(11) "Solicit" means attempting to sell insurance, ~~or~~ asking or urging a person to apply for a particular kind of insurance from a particular company, OR ASKING OR URGING A PERSON TO USE THE SERVICES OF, OR SERVICES IN CONNECTION WITH ACTIVITIES AS, A PUBLIC ADJUSTER.

SECTION 2. In Colorado Revised Statutes, 10-2-105, **add** (2.5) as follows:

10-2-105. Insurance producer - exemptions from definition.

(2.5) WITH RESPECT TO PUBLIC ADJUSTERS, A LICENSE AS A PUBLIC ADJUSTER IS NOT REQUIRED FOR:

(a) AN ATTORNEY-AT-LAW ADMITTED TO PRACTICE IN THIS 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 OF AN INCIDENTAL NATURE TO A LICENSED PUBLIC ADJUSTER, INCLUDING A PHOTOGRAPHER, ESTIMATOR, PRIVATE INVESTIGATOR, ENGINEER, OR HANDWRITING EXPERT;

(d) A LICENSED HEALTH CARE PROVIDER, OR EMPLOYEE OF A LICENSED HEALTH CARE PROVIDER, WHO PREPARES OR FILES A HEALTH CLAIM FORM ON BEHALF OF A PATIENT; OR

(e) A PERSON WHO SETTLES SUBROGATION CLAIMS BETWEEN INSURERS.

SECTION 3. In Colorado Revised Statutes, 10-2-301, **add** (3.5) as follows:

10-2-301. Continuing education requirement. (3.5) (a) AN INDIVIDUAL WHO HOLDS A PUBLIC ADJUSTER LICENSE AND WHO IS NOT EXEMPT UNDER PARAGRAPH (b) OF THIS SUBSECTION (3.5) SHALL SATISFACTORILY COMPLETE CONTINUING EDUCATION COURSES AS REQUIRED BY THE COMMISSIONER UNDER THIS SECTION.

(b) LICENSEES HOLDING NONRESIDENT PUBLIC ADJUSTER LICENSES WHO HAVE MET THE CONTINUING EDUCATION REQUIREMENTS OF THEIR HOME STATE AND WHOSE HOME STATE GIVES CREDIT TO RESIDENTS OF THIS STATE ON THE SAME BASIS MEET THE REQUIREMENTS OF THIS SECTION.

SECTION 4. In Colorado Revised Statutes, **amend** 10-2-417 as follows:

10-2-417. Public insurance adjusters - license required - financial responsibility - standards of conduct - rules. ~~No person shall act or hold oneself out to be a public insurance adjuster adjusting claims for losses or damages arising out of policies of fire and allied lines insurance employed by and representing solely the interest of the named insured in a policy of fire and allied lines insurance unless licensed therefor. The commissioner may accept application of any person to act as a public insurance adjuster.~~ (1) (a) A PERSON SHALL NOT ACT OR HOLD HIMSELF OR HERSELF OUT AS A PUBLIC ADJUSTER IN THIS STATE UNLESS THE PERSON IS LICENSED AS A PUBLIC ADJUSTER IN ACCORDANCE WITH THIS ARTICLE. NO PERSON WHO, ON OR BEFORE THE EFFECTIVE DATE OF THIS SECTION, AS AMENDED, HOLDS A LICENSE AS A PUBLIC ADJUSTER PREVIOUSLY ISSUED UNDER THE LAWS OF THIS STATE IS REQUIRED TO SECURE AN ADDITIONAL LICENSE UNDER THIS ARTICLE, BUT IS OTHERWISE SUBJECT TO THIS ARTICLE INCLUDING COMPLYING WITH THE FINANCIAL RESPONSIBILITY REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION. THE PREVIOUSLY ISSUED LICENSE IS, FOR ALL PURPOSES, CONSIDERED A LICENSE ISSUED UNDER THIS ARTICLE.

(b) A PERSON LICENSED AS A PUBLIC ADJUSTER SHALL NOT

MISREPRESENT TO AN INSURED THAT HE OR SHE IS AN ADJUSTER REPRESENTING AN INSURER IN ANY CAPACITY, INCLUDING ACTING AS AN EMPLOYEE OF THE INSURER OR ACTING AS AN INDEPENDENT ADJUSTER, UNLESS SO APPOINTED BY AN INSURER IN WRITING TO ACT ON THE INSURER'S BEHALF FOR THAT SPECIFIC CLAIM OR PURPOSE. A LICENSED PUBLIC ADJUSTER IS PROHIBITED FROM CHARGING AN INSURED A FEE IF THE PUBLIC ADJUSTER ACCEPTS AN APPOINTMENT BY THE INSURER.

(c) A BUSINESS ENTITY ACTING AS A PUBLIC ADJUSTER IS REQUIRED TO OBTAIN A PUBLIC ADJUSTER LICENSE. APPLICATION SHALL BE MADE IN THE FORM REQUIRED BY THE COMMISSIONER. BEFORE APPROVING THE APPLICATION, THE INSURANCE COMMISSIONER SHALL FIND THAT:

(I) THE BUSINESS ENTITY HAS PAID THE FEES SET BY THE COMMISSIONER; AND

(II) THE BUSINESS ENTITY HAS DESIGNATED A LICENSED PUBLIC ADJUSTER RESPONSIBLE FOR THE BUSINESS ENTITY'S COMPLIANCE WITH THE INSURANCE LAWS AND RULES OF THIS STATE.

(2)(a) BEFORE RECEIVING A LICENSE AS A PUBLIC ADJUSTER AND FOR THE DURATION OF THE LICENSE, THE APPLICANT SHALL SECURE EVIDENCE OF FINANCIAL RESPONSIBILITY IN A FORMAT PRESCRIBED BY THE COMMISSIONER THROUGH A SURETY BOND EXECUTED AND ISSUED BY AN INSURER AUTHORIZED TO ISSUE SURETY BONDS IN THIS STATE, WHICH BOND:

(I) MUST BE IN THE MINIMUM AMOUNT OF TWENTY THOUSAND DOLLARS;

(II) MUST BE IN FAVOR OF THIS STATE AND MUST SPECIFICALLY AUTHORIZE RECOVERY BY THE COMMISSIONER ON BEHALF OF ANY PERSON IN THIS STATE WHO SUSTAINED DAMAGES AS THE RESULT OF THE APPLICANT'S ERRONEOUS ACTS, FAILURE TO ACT, CONVICTION OF FRAUD, OR CONVICTION OF UNFAIR PRACTICES IN HIS OR HER CAPACITY AS A PUBLIC ADJUSTER; AND

(III) MUST NOT BE TERMINATED UNLESS AT LEAST THIRTY DAYS' PRIOR WRITTEN NOTICE IS FILED WITH THE COMMISSIONER AND GIVEN TO THE LICENSEE.

(b) THE ISSUER OF THE EVIDENCE OF FINANCIAL RESPONSIBILITY SHALL NOTIFY THE COMMISSIONER UPON TERMINATION OF THE BOND, UNLESS OTHERWISE DIRECTED BY THE COMMISSIONER.

(c) THE COMMISSIONER MAY ASK FOR THE EVIDENCE OF FINANCIAL RESPONSIBILITY AT ANY TIME THE COMMISSIONER DEEMS RELEVANT.

(d) THE COMMISSIONER SHALL SUMMARILY SUSPEND THE AUTHORITY TO ACT AS A PUBLIC ADJUSTER IF THE EVIDENCE OF FINANCIAL RESPONSIBILITY TERMINATES OR BECOMES IMPAIRED.

(3) A PUBLIC ADJUSTER SHALL NOT PAY A COMMISSION, SERVICE FEE, OR OTHER VALUABLE CONSIDERATION TO A PERSON FOR INVESTIGATING OR SETTLING CLAIMS IN THIS STATE IF THAT PERSON IS REQUIRED TO BE LICENSED UNDER THIS ARTICLE AND IS NOT LICENSED.

(4) IN THE EVENT OF A CATASTROPHIC DISASTER, NO PUBLIC ADJUSTER SHALL CHARGE, AGREE TO, OR ACCEPT AS COMPENSATION OR REIMBURSEMENT ANY PAYMENT, COMMISSION, FEE, OR OTHER THING OF VALUE IN EXCESS OF TEN PERCENT OF ANY INSURANCE SETTLEMENT OR PROCEEDS. NO PUBLIC ADJUSTER SHALL REQUIRE, DEMAND, OR ACCEPT ANY FEE, RETAINER, COMPENSATION, DEPOSIT, OR OTHER THING OF VALUE PRIOR TO SETTLEMENT OF A CLAIM.

(5) A PUBLIC ADJUSTER WHO RECEIVES, ACCEPTS, OR HOLDS ANY FUNDS ON BEHALF OF AN INSURED TOWARDS THE SETTLEMENT OF A CLAIM FOR LOSS OR DAMAGE SHALL DEPOSIT THE FUNDS IN A NONINTEREST-BEARING ESCROW OR TRUST ACCOUNT IN A FINANCIAL INSTITUTION THAT IS INSURED BY AN AGENCY OF THE FEDERAL GOVERNMENT IN THE PUBLIC ADJUSTER'S HOME STATE OR WHERE THE LOSS OCCURRED.

(6) (a) A PUBLIC ADJUSTER IS OBLIGATED, UNDER HIS OR HER LICENSE, TO SERVE WITH OBJECTIVITY AND LOYALTY THE INTEREST OF HIS OR HER CLIENT ALONE AND TO RENDER TO THE INSURED SUCH INFORMATION, COUNSEL, AND SERVICE, WITHIN THE KNOWLEDGE, UNDERSTANDING, AND OPINION IN GOOD FAITH OF THE LICENSEE, AS WILL BEST SERVE THE INSURED'S INSURANCE CLAIM NEEDS AND INTERESTS.

(b) A PUBLIC ADJUSTER SHALL NOT SOLICIT, OR ATTEMPT TO SOLICIT, AN INSURED DURING THE PROGRESS OF A LOSS-PRODUCING OCCURRENCE, AS

DEFINED IN THE INSURED'S INSURANCE CONTRACT.

(c) A PUBLIC ADJUSTER SHALL NOT PERMIT AN UNLICENSED EMPLOYEE OR REPRESENTATIVE OF THE PUBLIC ADJUSTER TO CONDUCT BUSINESS FOR WHICH A LICENSE IS REQUIRED UNDER THIS ARTICLE.

(d) A PUBLIC ADJUSTER SHALL NOT HAVE A DIRECT OR INDIRECT FINANCIAL INTEREST IN ANY ASPECT OF THE CLAIM, OTHER THAN THE SALARY, FEE, COMMISSION, OR OTHER CONSIDERATION ESTABLISHED IN THE WRITTEN CONTRACT WITH THE INSURED.

(e) A PUBLIC ADJUSTER SHALL NOT ACQUIRE ANY INTEREST IN SALVAGE OF PROPERTY SUBJECT TO THE CONTRACT WITH THE INSURED UNLESS THE PUBLIC ADJUSTER OBTAINS WRITTEN PERMISSION FROM THE INSURED AFTER SETTLEMENT OF THE CLAIM WITH THE INSURER.

(f) A PUBLIC ADJUSTER SHALL NOT REFER OR DIRECT THE INSURED TO GET NEEDED REPAIRS OR SERVICES IN CONNECTION WITH A LOSS FROM ANY PERSON:

(I) WITH WHOM THE PUBLIC ADJUSTER HAS A FINANCIAL INTEREST;
OR

(II) FROM WHOM THE PUBLIC ADJUSTER MAY RECEIVE DIRECT OR INDIRECT COMPENSATION FOR THE REFERRAL.

(g) A PUBLIC ADJUSTER SHALL NOT PARTICIPATE DIRECTLY OR INDIRECTLY IN THE RECONSTRUCTION, REPAIR, OR RESTORATION OF DAMAGED PROPERTY THAT IS THE SUBJECT OF A CLAIM ADJUSTED BY THE PUBLIC ADJUSTER.

(h) A PUBLIC ADJUSTER SHALL NOT ENGAGE IN ANY OTHER ACTIVITIES THAT MAY REASONABLY BE CONSTRUED AS PRESENTING A CONFLICT OF INTEREST, INCLUDING SOLICITING OR ACCEPTING ANY REMUNERATION FROM, OR HAVING A FINANCIAL INTEREST IN, ANY SALVAGE FIRM, REPAIR FIRM, OR OTHER FIRM THAT OBTAINS BUSINESS IN CONNECTION WITH ANY CLAIM THE PUBLIC ADJUSTER HAS A CONTRACT OR AGREEMENT TO ADJUST.

(i) PUBLIC ADJUSTERS SHALL ADHERE TO THE FOLLOWING GENERAL

ETHICAL REQUIREMENTS:

(I) A PUBLIC ADJUSTER SHALL NOT UNDERTAKE THE ADJUSTMENT OF A CLAIM IF THE PUBLIC ADJUSTER IS NOT COMPETENT AND KNOWLEDGEABLE AS TO THE TERMS AND CONDITIONS OF THE INSURANCE COVERAGE OR IF THE ADJUSTMENT OF THE CLAIM OTHERWISE EXCEEDS THE PUBLIC ADJUSTER'S EXPERTISE;

(II) A PUBLIC ADJUSTER SHALL NOT KNOWINGLY MAKE ANY ORAL OR WRITTEN MATERIAL MISREPRESENTATIONS OR STATEMENTS WHICH ARE FALSE AND INTENDED TO INJURE ANY PERSON ENGAGED IN THE BUSINESS OF INSURANCE TO ANY INSURED CLIENT OR POTENTIAL INSURED CLIENT;

(III) A PUBLIC ADJUSTER, WHILE LICENSED IN THIS STATE, SHALL NOT REPRESENT OR ACT AS A COMPANY ADJUSTER OR INDEPENDENT ADJUSTER ON THE SAME CLAIM;

(IV) (A) THE INSURED MAY RESCIND ANY CONTRACT OR OTHER FORM OF AGREEMENT FOR REPRESENTATION IN A PROPERTY OR CASUALTY LOSS OR CLAIM IF THE INSURED EXERCISES THIS RIGHT OF RESCISSION IN WRITING ADDRESSED TO THE INSURER AND THE PUBLIC ADJUSTER AND PUTS THE WRITTEN RESCISSION, POSTAGE PREPAID, IN THE UNITED STATES MAIL WITHIN SEVENTY-TWO HOURS AFTER SIGNING A SETTLEMENT REPRESENTATION AGREEMENT. ALL PUBLIC ADJUSTERS TAKING A REPRESENTATIVE AGREEMENT TO RESOLVE A PROPERTY OR CASUALTY LOSS OR CLAIM ON BEHALF OF AN INSURED SHALL GIVE TO THE INSURED WRITTEN NOTICE OF, AND DIRECTION AS TO, THE ABILITY TO EXERCISE THE INSURED'S RIGHT OF RESCISSION.

(B) A PUBLIC ADJUSTER SHALL NOT ENTER INTO A CONTRACT THAT PREVENTS AN INSURED FROM PURSUING ANY CIVIL REMEDY AFTER THE REQUIRED RESCISSION PERIOD UNDER SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (IV);

(V) A PUBLIC ADJUSTER SHALL NOT ENTER INTO A CONTRACT OR ACCEPT A POWER OF ATTORNEY THAT VESTS IN THE PUBLIC ADJUSTER THE EFFECTIVE AUTHORITY TO CHOOSE THE PERSONS WHO PERFORM REPAIR WORK; AND

(VI) A PUBLIC ADJUSTER SHALL ENSURE THAT ALL CONTRACTS FOR

THE PUBLIC ADJUSTER'S SERVICES ARE IN WRITING AND SET FORTH ALL TERMS AND CONDITIONS OF THE ENGAGEMENT.

(j) A PUBLIC ADJUSTER SHALL NOT AGREE TO ANY LOSS SETTLEMENT WITHOUT THE INSURED'S KNOWLEDGE AND CONSENT.

(7) The commissioner may promulgate ~~such~~ rules as ~~are~~ necessary to carry out ~~the provisions of~~ this section, including: ~~establishing nonrefundable fees and testing requirements for all applicants for licensure.~~

(a) REQUIREMENTS AND STANDARDS FOR WRITTEN CONTRACTS BETWEEN PUBLIC ADJUSTERS AND INSURED; AND

(b) THE REQUIRED RETENTION OF RECORDS BY PUBLIC ADJUSTERS.

SECTION 5. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 2014; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2014 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to the regulation of public insurance adjusters on or after the applicable effective date of this act.

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

John P. Morse
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO