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Bill Analysis
Legislative Service Commission

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Sen. Stivers

BILL SUMMARY

- Repeals the current Public Insurance Adjuster Law and enacts a new Public Adjuster Law.
- Requires public adjusters to be financially responsible and to obtain and maintain proof of financial responsibility.
- Requires public adjusters to submit to a criminal background check.
- Creates a nonresident public adjuster license.
- Prohibits a public adjuster from engaging in a variety of acts.
- Prohibits a public adjuster from receiving compensation in excess of 20% of any settlement or proceeds obtained from a claim.
- Prohibits a public adjuster from receiving compensation in excess of 10% of any settlement or proceeds obtained from a claim in the event of a catastrophic disaster.
- Revises the qualifications required of public adjuster applicants, revises the application and renewal procedure; revises the examination procedure.
- Requires a public adjuster to complete 12 hours of continuing education per license period.

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CONTENT AND OPERATION

Licensure requirement

Current law requires any person, firm, association, partnership, or corporation to obtain a certificate of authority to act as a public insurance adjuster

before receiving compensation for services rendered in the adjustment of any insurance claim. Under current law, the Superintendent of Insurance must issue certificates of authority to any person, firm, association, partnership, or corporation applying for a certificate who meets the prerequisites under the Public Insurance Adjusters Law. A person or entity that receives a certificate of authority from the Superintendent of Insurance is known as a "certified public insurance adjuster."

The bill prohibits a person from acting or holding oneself out as a public adjuster in Ohio unless the person is licensed as a public adjuster in accordance with the new Public Adjuster Law. The bill requires the Superintendent of Insurance to issue a public adjuster license to an applicant who satisfies the requirements of the new Public Adjuster Law. The bill does not refer to a "certified public insurance adjuster," instead using the term "public adjuster" to refer to a license holder. (Current and new R.C. 3951.02, current R.C. 3951.04.)

Requirements of an applicant

Under current law, the Superintendent of Insurance may not issue any certificate of authority to any applicant who is convicted of a felony, or any crime or offense involving fraud or dishonest practice or who, within three years preceding the date of filing such application has been guilty of any practice which would be grounds for suspension or revocation of a certificate of authority as a public insurance adjuster. (Current R.C. 3951.04.)

The bill requires that an applicant satisfy the following criteria before the Superintendent of Insurance grants a license to an applicant who: (1) is eligible to designate Ohio as the applicant's home state or is a nonresident who is not eligible for a nonresident public adjuster license, (2) has not committed any act that is a ground for denial, suspension, or revocation of a license, (3) is trustworthy, reliable, and of good reputation, evidence of which may be determined by the Superintendent, (4) is financially responsible to exercise the license and has provided proof of financial responsibility, (5) has paid the fees required by the Superintendent, (6) maintains an office in the home state of residence with public access by reasonable appointment or regular business hours, which shall include a designated office within a home state of residence, and (7) has satisfied any other applicable requirements of the new Public Adjuster Law. (New R.C. 3951.07(A).)

In addition, the bill requires individual applicants to be at least 18 years old and to have passed the public adjuster examination or have a valid exemption from the examination. The bill requires business entities to designate an individual public adjuster licensed under the Public Adjuster Law to be responsible for the business entity's compliance with the insurance laws, rules, and regulations of

Ohio and to designate only individual licensed public adjusters to exercise the business entity's license. (New R.C. 3951.07(B) and new R.C. 3951.04(A).)

Proof of financial responsibility

Current law prohibits any issuance or renewal of a certificate of authority unless the applicant is a resident of Ohio, a lending institution, or a bona fide employee of a lending institution who is authorized to act as a public insurance adjuster in another state on behalf of the lending institution, and there is on file with the Superintendent a bond, executed by such applicant and by approved sureties, in the penal sum of \$1,000 for each person designated in the application, conditioned for the faithful performance by such applicant and by all persons designated in such application, of their duties as public insurance adjusters. Current law also requires the bond to be approved as to form by the Attorney General and as to sufficiency by the Superintendent of Insurance. The bond must be made payable to the state and must specifically authorize recovery for and on behalf of an injured party of the sum provided therein in case the adjuster has been guilty of fraudulent or dishonest practices in connection with the transaction of business as an adjuster. (Current R.C. 3951.06(D).)

The bill removes the above provisions and establishes a financial responsibility requirement for all applicants for a public adjusters license. Before a license is issued and for the duration of the license, the applicant must secure evidence of financial responsibility in a format prescribed by the Superintendent of Insurance through a security bond or irrevocable letter of credit. (New R.C. 3951.10(A).)

If a surety bond is utilized, it must satisfy all of the following criteria: (1) be executed and issued by an insurer authorized to issue surety bonds in Ohio, (2) be in the minimum amount of \$20,000, (3) be in favor of Ohio and specifically authorize recovery by the Superintendent on behalf of any person in Ohio who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices in the public adjuster's capacity as a public adjuster, and (4) not be terminated unless at least 30 days' prior written notice is filed with the Superintendent and given to the licensee. (New R.C. 3951.10(B).)

An irrevocable letter of credit must satisfy all of the following criteria: (1) be issued by a qualified financial institution, (2) be in the minimum amount of \$20,000, (3) be to an account to the Superintendent and 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, fraudulent acts, or unfair practices in the public adjuster's capacity as a public adjuster, and (4) not be terminated unless at least 30 days' prior written notice is filed with the Superintendent and given to the licensee. (New R.C. 3951.10(C).)

The bill requires the issuer of the evidence of financial responsibility to notify the Superintendent upon termination of the bond or letter of credit, unless otherwise directed by the Superintendent. The Superintendent may ask for the evidence of financial responsibility at any time the Superintendent deems relevant. The bill specifies that the authority to act as a public adjuster automatically terminates if the evidence of financial responsibility terminates or becomes impaired. (New R.C. 3951.10(D), (E), and (F).)

Criminal background check and fingerprint collection

(new R.C. 3951.04)

The bill requires the Superintendent of Insurance to request a criminal records check of an applicant from the Superintendent of the Bureau of Criminal Identification and Investigation (BCII), in order to make a determination of license eligibility. The Superintendent of Insurance may request that the Superintendent of the BCII request a criminal records check from the Federal Bureau of Investigation (FBI), as well. The Superintendent of Insurance may receive criminal records check information directly from the FBI.

The bill requires the Superintendent of Insurance to require an applicant to submit fingerprints on forms prescribed by the Superintendent of the BCII. The Superintendent of Insurance may contract with another entity to collect and transmit the applicant's fingerprints to the BCII. The Superintendent of Insurance may charge an applicant a reasonable fee for collecting and transmitting the applicant's fingerprints.

Under the bill, the Superintendent of Insurance must keep an applicant's criminal records check information and fingerprints confidential. The Superintendent of Insurance is required to apply security measures consistent with the Criminal Justice Information Services Division of the FBI standards for the electronic storage of fingerprints and necessary identifying information and limit the use of such information to authorized uses. The bill establishes that an applicant's criminal records check information and fingerprints are not subject to subpoena, other than one issued in a criminal action or investigation, are confidential by law and privileged, and are not subject to discovery or admissible in any private civil action.

Nonresident public adjuster license

Under current law, a nonresident person cannot receive an Ohio public insurance adjuster certificate, unless the applicant is a lending institution, or a bona fide employee of a lending institution who is authorized to act as a public

insurance adjuster in another state on behalf of the lending institution. (Current R.C. 3951.06(D).)

The bill removes the provisions relating to lending institutions and creates a nonresident public adjuster license. The bill authorizes a nonresident person to apply for and to receive a nonresident public adjuster license if the Superintendent of Insurance determines all of the following: (1) the person is currently licensed as a resident public adjuster and in good standing in the person's home state, (2) the person has submitted the proper request for licensure and paid the fees required by the Superintendent, (3) the person has submitted or transmitted to the Superintendent the appropriate completed application for licensure, (4) the person's home state awards nonresident public adjuster licenses to residents of Ohio on the same basis, (5) the person has not committed any act that is a ground for denial, suspension, or revocation of a license, (6) the person is trustworthy, reliable, and of good reputation, evidence of which the Superintendent may determine, (7) the person is financially responsible to exercise the license and has provided proof of financial responsibility, (8) if the person is a business entity, that the business entity has designated an individual public adjuster to be responsible for the business entity's compliance with the insurance laws, rules, and regulations of Ohio and designated only individual public adjusters to exercise the business entity's license, and (9) the person has satisfied any other applicable requirements of the Public Adjuster Law. (New R.C. 3951.08(A).)

The bill allows the Superintendent to verify the public adjuster's licensing status through the producer database maintained by the NAIC, its affiliates, or subsidiaries. As a condition to continuation of a nonresident public adjuster license, the bill requires the licensee to maintain a resident public adjuster license in the licensee's home state. The nonresident public adjuster license issued under the bill terminates and must be surrendered immediately to the Superintendent if the home state public adjuster license terminates for any reason, unless the public adjuster has been issued a license as a resident public adjuster in the public adjuster's new home state. Notification to the state or states where the nonresident license is issued must be made as soon as possible, yet not later than 30 days after the adjuster is issued a license in the adjuster's new home state. In the notification, the licensee must include the licensee's current and former address. A new home state resident license is required for nonresident licenses to remain valid. The new home state resident license must have reciprocity with the licensing nonresident state in order for the nonresident license to remain valid. (New R.C. 3951.08(B) and (C).)

Disciplinary actions against public adjusters

Under current law, the Superintendent of Insurance may suspend, revoke, or refuse to issue a certificate of authority to any applicant if, after due



investigation, notice, and hearing, either before the Superintendent or designated employee of the Insurance Department whose report the Superintendent may adopt, the Superintendent determines that such applicant or holder of a certificate of authority has done any of the following: (1) violated any provision of sections of the Public Insurance Adjusters Law, (2) engaged in fraudulent or dishonest practices, (3) made a material misstatement in the application for such certificate, (4) demonstrated his, or its, incompetency or untrustworthiness to act as public insurance adjuster, or (5) obtained from any claimant an assignment of a claim. (Current R.C. 3951.07.)

Current law requires that before the Superintendent revokes, suspends, or refuses to issue any certificate of authority, written notice of the grounds for the disciplinary action, and the time and place of the hearing must be given to the applicant. Full opportunity has to be given at such hearing to the person, firm, association, partnership, or corporation to appear with counsel and be heard upon the charges. The final action of the Superintendent in rejecting an application or in revoking or suspending a certificate of authority must be by written notice to the applicant or holder of the certificate of authority. All notices are required to be sent to applicants or holders of certificates of authority by registered or certified mail to his last known business address. Within 30 days after revocation or suspension of the certificate of authority or the refusal of the Superintendent to grant a certificate of authority, the person, firm, association, partnership, or corporation aggrieved may appeal from the ruling of the Superintendent. All decisions and findings of the Superintendent made under the Public Insurance Adjusters Law are subject to the Administrative Procedure Act (APA). (Current R.C. 3951.07.)

The bill expands the authority of the Superintendent of Insurance to discipline a public adjuster for a variety of actions taken by the public adjuster. The Superintendent of Insurance retains discretion whether to suspend, revoke, or refuse to issue or renew a license or to otherwise impose sanctions on the license holder or applicant as a consequence of all of the following actions: (1) misrepresenting to a claimant that the adjuster is an adjuster representing an insurer in any capacity, including, but not limited to, 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 that specific claimant a fee when appointed by the insurer and the public adjuster accepts the appointment, (2) providing incorrect, misleading, incomplete, or materially untrue information in the license application, (3) violating any insurance laws, or violating any regulation, subpoena, or order of the Superintendent or of the insurance authority of another state, (4) obtaining or attempting to obtain a license through misrepresentation or fraud, (5) improperly withholding, misappropriating, or

converting any moneys or properties received in the course of doing insurance business, (6) intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance, (7) being convicted of a felony, (8) admitting or being found to have committed any insurance unfair trade practice or insurance fraud, (9) using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Ohio or elsewhere, (10) having an insurance license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory, (11) forging another's name to an application for insurance or to any document related to an insurance transaction, (12) cheating, including, but not limited to, improperly using notes or any other reference material to complete an examination for an insurance license, (13) knowingly accepting insurance business from an individual who is not licensed but who is required to be licensed by the Superintendent, (14) not reporting or taking corrective action if the public adjuster is a business entity and the Superintendent of Insurance finds, after a hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the business entity, (15) engaging in any manner or degree, for compensation of any kind, in the business of repairing, remodeling, or replacing damaged or destroyed real or personal property, which damage is covered by an insurance policy, (16) having any direct or indirect interest or receiving compensation of any kind from any person engaged in the business of repairing, remodeling, or replacing damaged or destroyed real or personal property, which damage is covered by an insurance policy, (17) soliciting or attempting to solicit a loss during the progress of a fire or while a fire department or any of the department's representatives are engaged at the damaged premises in any manner, (18) interfering with the duties of an investigator from the state fire marshal's office, an investigator from any fire department, or a law enforcement officer of Ohio or any political subdivision of Ohio, (19) giving or offering to give to an insured or the insured's representative any portion of the public adjuster's fee or anticipated settlement of a claim for loss or damage as an inducement to secure a contract for adjusting the loss, (20) representing oneself as a fire investigator or a person connected with any fire department or law enforcement agency, (21) paying a commission, service fee, or other valuable consideration to any person to solicit, negotiate, investigate, or settle a claim if the person is not licensed under the Public Adjuster Law, (22) unfairly and dishonestly inventorying or estimating loss or damage, and (23) owning or acquiring any direct or indirect financial interest in any real or personal property, or the sale of any salvage of that property, which is the subject of a loss adjusted by the public adjuster. (New R.C. 3951.11.)

Notice requirements

Under the bill, the Superintendent of Insurance is required to provide the licensee or applicant with notice and an opportunity for a hearing pursuant to the APA, prior to any disciplinary action. The bill also creates exceptions to the notice requirements of the APA. For most mailings, regular mail is required; however, the bill requires any notice of opportunity for hearing, a hearing officer's findings or recommendations, or the Superintendent of Insurance's order be served by certified mail, return receipt requested, at the licensee's or applicant's last known address. If a certified mail envelope is returned showing service was refused or the envelope was unclaimed, all subsequent notices may be served by ordinary mail. If service by ordinary mail fails, the Superintendent of Insurance may publish a summary of the substantive provisions of the notice to be published in a newspaper of general circulation once a week for three weeks. The bill allows the Superintendent of Insurance to perfect service of a notice by personal delivery in lieu of the aforementioned options at any time.

The bill requires the Superintendent of Insurance to serve the party's attorney by ordinary mail if the attorney has entered an appearance in the matter. Any subpoena for a witness or the production of documents has to be served by certified mail, return receipt requested, by an attorney or by an employee of the Department of Insurance.

Penalties for violations

Current law establishes a fine of not less than \$100 and not more than \$500 for each loss adjusted by a person, firm, association, partnership, or corporation without a certificate of authority. These penalties are in addition to the authority of the Superintendent of Insurance to suspend, revoke, or refuse to issue a certificate. (Current R.C. 3951.99(A).)

Under the bill, the Superintendent of Insurance may impose penalties whenever the Superintendent determines there has been a violation of R.C. 3951.11 (listing of various prohibited practices--see above). The Superintendent of Insurance may do any of the following: (1) assess a civil penalty in an amount not exceeding \$25,000 per violation, (2) assess administrative costs to cover the expenses incurred by the Superintendent in the administrative action, including costs incurred in the investigation and hearing processes to be paid into the state treasury to the credit of the Department of Insurance operating fund, (3) suspend the person's license for either a specified period of time or an indefinite period of time and under such terms and conditions as the Superintendent determines, (4) permanently revoke the person's license, (5) refuse to issue or renew a license, (6) prohibit the person from being employed in any capacity in the business of insurance and from having any financial interest in any public adjuster agency,

insurance agency, company, surety bail bond business, or third-party administrator in Ohio, (7) order corrective actions in lieu of or in addition to the other penalties, and (8) accept a surrender for cause offered by the licensee, which must be for at least five years and prohibit the licensee from seeking any license under the Public Adjuster Law during that time period. (New R.C. 3951.11(D) and (E).)

Cease and desist orders

Under the bill, if the Superintendent determines a violation of R.C. 3951.11 has caused, is causing, or is about to cause a substantial and material harm, the Superintendent may issue an order requiring the person to cease and desist from engaging in the violation. The order must be mailed by certified mail, return receipt requested to the violator and the Superintendent may publicize the order. The notice must specify the particular act, omission, practice, or transaction subject to the order and set a date for a hearing, which shall not be more than 15 days after the date of the order. The person immediately has to comply with the order. The hearing which may be continued is subject to the APA to the extent that it does not conflict with the section. Within 15 days after objections to the hearing officer's report are submitted, the Superintendent must issue a final order (appealable under the APA) confirming or revoking the cease and desist order. (R.C. 3951.11(F).)

Action by the Attorney General

The bill authorizes the Superintendent to request the Attorney General commence and prosecute an action against a person, when the Superintendent has reasonable cause to believe an order issued under R.C. 3951.11 has been violated. A court may impose the following penalties in such an action: (1) for each violation, a civil penalty of not more than \$25,000, (2) injunctive relief, (3) restitution, or (4) any other appropriate relief. (R.C. 3951.11(G).)

Modification of disciplinary actions

The bill permits a person whose license has been denied, suspended, revoked, or surrendered for cause to apply for a hearing to modify the administrative action. The Superintendent is required to hold such a hearing if all of the following conditions are met: (1) at least five years have elapsed since the date of the administrative action sought to be modified, (2) at least two years have elapsed since any previous request for a modification was made under this section, and (3) the burden of proof is on the person requesting the modification. If a license is issued pursuant to a modification of an administrative action, the issuance is conditioned upon successful completion of all examination requirements. (R.C. 3951.12(A).)

Disciplinary actions other than by the Department of Insurance

The bill requires a public adjuster to report any administrative action taken against the public adjuster by another jurisdiction or Ohio government agency within 30 days of the final disposition of the matter. The report must include a copy of the order, consent to order, or other relevant legal documents. (R.C. 3951.14.)

Criminal prosecution notice requirements

The bill requires a public adjuster to report, within 30 days of the initial pre-trial hearing, any criminal prosecution taken against the public adjuster by any other jurisdiction to the Superintendent. The report must include a copy of the initial complaint, the order resulting from the hearing, and any other relevant legal documents. (R.C. 3951.14.)

Private cause of action

The bill stipulates that nothing in R.C. 3951.11 can be construed to permit a private cause of action against a public adjuster or insurer. (R.C. 3951.11(H).)

Fees and fee sharing

The bill caps the amount of compensation a public adjuster may charge, agree to charge, or accept at 20% of any insurance settlement or proceeds obtained from a claim and prohibits a public adjuster from paying a commission, service fee, or other valuable consideration to a person for investigating or settling claims in Ohio if that person is required to be licensed as a public adjuster and is not licensed. The bill also prohibits a person from accepting a commission, service fee, or other valuable consideration for investigating or settling claims in Ohio if that person is required to be licensed as a public adjuster and the person is not licensed. (R.C. 3951.16(A), (B), and (D).)

Catastrophic disaster

In the case of a "catastrophic disaster," defined in the bill, the bill caps the amount of compensation a public adjuster may charge at 10% of any insurance settlement or proceeds. A public adjuster may not require compensation prior to settlement of a claim unless the public adjuster is hired on an hourly basis with respect to a commercial claim. (R.C. 3951.16(E).)

Authorized fee sharing

A public adjuster may pay or assign commission, service fees, or other valuable consideration to persons who do not investigate or settle claims in Ohio,

unless the payment would violate existing law prohibiting certain fee sharing agreements between licensed and unlicensed insurers or agents. (R.C. 3951.16(C).)

License application form

Current law requires an applicant to file an application with the Superintendent before any certificate of authority may be issued. The form of the application is prescribed by the Superintendent, but must contain certain specific information including:

(1) The name and address of the applicant, and in the case of a firm, association, or partnership, the name and address of each member of the entity, and if the applicant is a corporation, the name and address of each of its officers and directors;

(2) Information as to whether any license or certificate of authority as agent, broker, or public insurance adjuster has been issued previously in Ohio or any other state to the individual, and whether any license or certificate has been issued to any firm, association, or partnership of which the individual was or is an officer or director;

(3) If the applicant is a firm, association, or partnership, information as to whether a license or certificate has been issued previously to any member of the firm, association, or partnership;

(4) If the applicant is a corporation, information as to whether a license or certificate has been issued previously to any officer or director of such corporation;

(5) The business or employment in which the applicant has been engaged for the five years preceding the date of application and the name and address of such business and the name or names and addresses of his employer or employers;

(6) Such information as the Superintendent may require to determine the trustworthiness and competency of the applicant, in such a manner as to safeguard the public interest.

The application must be signed and verified under oath by the applicant, and if the applicant is a firm, association, partnership, or corporation, by each member or officer and director. (Current R.C. 3951.03.)

The bill removes the above requirements and specifies that the Superintendent may accept a uniform application, defined in the bill, or any other application form the Superintendent prescribes. The applicant is required to

transmit any information the Superintendent requires, and any documents reasonably necessary to verify the information contained in the application. An applicant also must complete a declaration under penalty of perjury and under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the applicant's knowledge and belief. (New R.C. 3901.04(A) and (B).)

License application fee

Under current law, each applicant for a certificate of authority must pay a \$100 application fee. If the applicant is a firm, association, partnership, or corporation, the fee has to be paid for each person specified in the application. (Current R.C. 3951.06(A).)

The bill requires each applicant for licensure to pay a nonrefundable \$100 application fee. (New R.C. 3951.04(C).)

License examination

Under current law, the Superintendent must require applicants to submit to a written examination, except applicants who are granted a waiver of examination. Examinations are held in a place in Ohio and at a time that the Superintendent designates. The Superintendent may waive the requirement that an applicant submit to an application if the applicant is licensed as a public insurance adjuster in another state that required the applicant to submit to an examination as a condition of licensure. Prior to waiving the requirement with respect to a public insurance adjuster licensed in another state, the Superintendent must issue a notice at least 60 days prior to the effective date of the waiver identifying the applicant's other state of licensure. The notice must be issued in a manner the Superintendent deems appropriate. Once the Superintendent has issued a notice identifying an applicant's state of licensure, the Superintendent need not issue subsequent notices as to applicants licensed in the same state in order to waive the examination requirement for those applicants. (Current R.C. 3951.05 and 3951.09.)

The bill retains the requirement that an applicant for a public adjuster license pass a written examination. However, the bill requires that the examination test the knowledge of the individual concerning the duties and responsibilities of a public adjuster and the insurance laws and rules of Ohio. Examinations are required to be developed and conducted under rules prescribed by the Superintendent. Before admission to the examination, each individual must pay a nonrefundable examination fee as required by the Superintendent. The bill grants the Superintendent rulemaking authority to implement the examination requirements and authorizes the Superintendent to make any necessary arrangements, including contracting with an outside testing service, for the

administration of the examinations and collection of fees. An individual who fails to appear for the examination as scheduled or fails to pass the examination must reapply for an examination and remit all required fees and forms before being rescheduled for another examination. (R.C. 3951.05.)

The bill retains the exemption for an applicant who was previously licensed as a public adjuster in another state based on a public adjuster examination. However, the bill places more conditions on this exemption than does current law. The exemption is only available if the applicant is currently licensed in that other state, or if the application is received within 12 months of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's producer database records or records maintained by the NAIC, its affiliates, or subsidiaries indicate that the public adjuster was licensed in good standing. The bill requires a person licensed as a public adjuster in another state who moves to Ohio to make an application within 90 days of establishing legal residence to become a resident licensee. The bill allows a person who was previously licensed as a public adjuster in Ohio to become licensed again without examination if the application is received within 12 months of the cancellation of the applicant's previous license in Ohio, and if, at the time of cancellation, the applicant was in good standing in Ohio. (New R.C. 3951.06.)

Terms of licensure and renewal

Under current law, each public insurance adjuster's certificate of authority expires on the 31st day of December of the calendar year in which it was issued, and may be renewed according to the standard renewal procedure of R.C. sections 4745.01 to 4745.03. Current law permits each public insurance adjuster's certificate of authority to be renewed without examination for the next year with a payment of a \$50 fee. If an application for the renewal of a certificate has been filed with the Superintendent before January first of any year, the certificate of authority sought to be renewed continues in full force and effect until the issuance by the Superintendent of the new certificate applied for or until five days after the Superintendent has refused to issue a new certificate and has served notice of such refusal on the applicant. Service of such notice must be made by registered or certified mail directed to the applicant at the place of business specified in the application. (Current R.C. 3951.06(A).)

Under the bill, a public adjuster license continues to be valid until the 31st day of December of the year in which the license was issued or renewed unless the license is revoked, terminated, or suspended. The bill requires the license to contain the licensee's name, city and state of business address, license number, the date of issuance, the expiration date, and any other information the Superintendent deems necessary. The bill authorizes the Superintendent to contract with

nongovernmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees and data related to licensing that the Superintendent deems appropriate. (New R.C. 3951.09(A), (G), and (H).)

The bill requires the licensee to inform the Superintendent by any means acceptable to the Superintendent of a change of address, change of legal name, or change of information submitted on the application within 30 days of the change. The bill establishes that licensed public adjusters are subject to the Insurance Producers Licensing Act and the criminal provisions of the Ohio Insurance Code, as well as any administrative rules adopted pursuant to those laws. (New R.C. 3951.09(D) and (E).)

Under the bill, if a licensee wishes to renew a license, the licensee must submit to the Superintendent before the license expires any renewal forms the Superintendent prescribes and a renewal fee of \$50. A licensee's license expires automatically without any action by the Superintendent if the licensee fails to submit to the Superintendent any required renewal forms, pay the required renewal fee, or complete the continuing education requirements for the preceding license period. (R.C. 3951.09(B).)

Lapsed licenses

The bill requires a licensee that fails to apply for renewal of a license before expiration of the current license to pay a lapsed license fee of \$200 and be subject to any other penalties provided by law. If a public adjuster fails to renew a license before it expires, the public adjuster may request that the Superintendent reinstate the license. If the Superintendent receives a request for reinstatement and the required lapsed license fee within one year of the date the license expired, and the public adjuster completes the continuing education requirements for the calendar year preceding the year in which the public adjuster seeks reinstatement, the Superintendent must reinstate the license. The license is effective from the date the Superintendent approves the reinstatement. If the person applies for reinstatement more than one year from the date the license expired, the person may reapply for a license as described in this chapter. (New R.C. 3951.09(B) and (C).)

Waiver due to extenuating circumstances

The bill allows a licensed public adjuster that is unable to comply with license renewal procedures due to military service, a long-term medical disability, or some other extenuating circumstance, to request a waiver of those procedures. The public adjuster also may request a waiver of any examination requirement,

fine, or other sanction imposed for failure to comply with renewal procedures. (New R.C. 3951.09(F).)

Bona fide employees of a public insurance adjuster

Under current law, the Superintendent must issue a public insurance adjuster certificate to a person who is a bona fide employee of a public insurance adjuster without examination, as long as a person, partnership, association make the application, or corporation engaged in the public insurance adjusting business. Such an applicant must pay a licensing fee of \$50 at the time of the application, and annually thereafter for renewal. The applicant must be bonded in the amount of \$1,000. (Current R.C. 3951.03(E).) The bill removes this provision.

Unauthorized practice of law

Under current law, holders of certificates of authority are prohibited from making any misrepresentations of facts or advising any insured or insurer on any question of law or performing any service constituting the practice of law, or from advising an insured or insurer to refrain from retaining counsel to protect his interest. (R.C. 3951.08.)

The bill removes this provision, however, individuals are prohibited from engaging in the unauthorized practice of law under Ohio law and under the rules and decisions of the Ohio Supreme Court. (R.C. 4705.07, not in the bill.)

Exemption from the Private Investigator Law

Under current law, public insurance adjusters are exempt from the Private Investigator Law. The bill continues to exempt public adjusters while investigating the cause or responsibility for a fire, accident, or other damage under a policy of insurance covering real or personal property. (R.C. 4749.01(H).)

Holding funds of an insured

The bill requires a public adjuster who receives, accepts, or holds funds on behalf of an insured towards the settlement of a claim for loss or damage, to deposit the funds in an non-interest bearing escrow or trust account. The account must be with 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. (R.C. 3951.17.)

Supplemental certificate of authority

Under current law, a firm, association, partnership, or corporation to which a certificate of authority has been issued by the Superintendent, at any time, may

apply to the Superintendent for the issuance of a supplemental certificate of authority authorizing additional officers or directors of the corporation or members of the firm, association, or partnership to act as a public insurance adjuster. The Superintendent may issue a supplemental certificate to such firm, association, partnership, or corporation upon the payment of a fee of \$50 for each member or officer or director authorized to act as a public insurance adjuster. (Current R.C. 3951.06(B).) The bill eliminates this provision.

Continuing education requirements and exemptions

(new R.C. 3951.15)

In current law, there are no requirements for continuing education for public insurance adjusters. The bill imposes a requirement on public adjusters that requires all individual licensees, unless they are exempt, to complete 12 hours of continuing education, that includes 1.5 hours of ethics continuing education, each license renewal period. If a licensee fails to complete the continuing education requirements, the licensee's license automatically expires without any action from the Superintendent. The bill grants the Superintendent rulemaking authority to carry out the Superintendent's duties regarding continuing education.

The bill exempts from the continuing education requirements: (1) licensees not licensed for one full year prior to the end of the applicable continuing education, and (2) 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 Ohio on the same basis.

Exclusions

(current R.C. 3951.01 and new R.C. 3951.03)

Under current law, the Public Insurance Adjuster Law does not apply to an attorney admitted to practice in Ohio who adjusts insurance losses in the courts of the attorney's profession and who does not hold the attorney out by sign, advertisement, or otherwise as offering such services to the general public. The bill revised this exclusion to apply to an attorney admitted to practice in Ohio when acting in the attorney's professional capacity as an attorney.

Under current law, the Public Insurance Adjuster Law does not apply to (1) an officer, agent, or regular salaried employee of an insurer, underwriter, or any attorney in fact of any reciprocal insurer of Lloyds underwriter licensed to do business in Ohio who adjusts losses arising under the employer's or principal's own policies, (2) an underwriter by whom a policy of insurance against loss or damage or other causes has been written upon property within Ohio, in adjusting

loss or damage under such policy, or (3) an agent or broker acting as adjuster for the agent's or broker's own company. The bill removes these exclusions.

Current law also excludes the following from the Public Insurance Adjuster Law: (1) an adjustment bureau or association owned and maintained by insurers to adjust or investigate losses of those insurers, or any regularly salaried employee of the bureau or association who devotes substantially all of the employee's time to the business of such bureau or association, (2) any licensed agent, employee, or officer of an agent or agency of an authorized insurer who adjusts losses for the insurer solely under policies issued through the agency, and (3) any independent adjuster representing an insurer. The bill removes these exclusions.

The bill creates several new exclusions from the new Public Adjusters Law as follows:

- (1) A person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract;
- (2) A person employed only to obtain facts surrounding a loss or to furnish technical assistance to a licensed public adjuster, including photographers, estimators, private investigators, engineers, and handwriting experts;
- (3) A licensed health care provider or the employee of a licensed health care provider who prepares or files a health claim form for a patient;
- (4) A person who settles subrogation claims between insurers.

Child support orders

Continuing law requires the Superintendent to comply with the law concerning regarding the default of a child support order. Under continuing law, when the Superintendent receives a notice containing the name and social security number of a license holder who is found to be in default of a child support order or is an obligor who has failed to comply with a subpoena or warrant issued by a court or agency with respect to a proceeding to enforce a child support order, the Superintendent is required to not issue or renew, or to suspend the holder's license. The Superintendent may not reinstate the license until the Superintendent receives notice that the person is no longer in default or is in compliance with the subpoena or warrant. (Current and new R.C. 3951.10 and R.C. 3123.41 to 3123.50, not in the bill.)

Rulemaking authority

The bill grants the Superintendent rulemaking authority to implement the Public Adjusters Law, including rules on the following subjects: (1) requirements

related to the contracts between public adjusters and insureds, (2) written disclosures to be made by public adjusters to insureds, (3) record retention requirements, and (4) standards of conduct and ethics for public adjusters.

Definitions

(current and new R.C. 3951.01; R.C. 3951.11(A))

The bill changes the definition of some of the key terms of the Public Insurance Adjuster Law. Under current law, a "public insurance adjuster" means any person, firm, association, partnership, or corporation who, for compensation, acts on behalf of or aids in any manner, an insurer or insured or another in negotiating for, or effecting the settlement of a claim or claims for loss or damage under any policy of insurance covering real or personal property, and any person, firm, association, partnership, or corporation who advertises, solicits business, or holds itself out to the public as an adjuster of such insurance claims, and any person who for compensation investigates, settles, adjusts, advises, or assists an insurer or insured with reference to claims for such losses, on behalf of any such public insurance adjuster.

The bill defines "public adjuster" as any person who, for compensation or any other thing of value on behalf of the insured, does any of the following: (1) acts or aids, solely in relation to first party claims arising under insurance contracts that insure the real or personal property 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, (2) advertises for employment as a public adjuster of insurance claims or solicits business or represents oneself 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 (3) 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 for another person engaged in the business of adjusting losses or damages covered by an insurance policy, for the insured.

Under current law, the term "lending institution" is defined to mean (1) any financial institution qualified to conduct business in Ohio, a subsidiary corporation that is wholly owned by a financial institution qualified to conduct business in Ohio, and a mortgage lender whose regular business is originating, servicing, or brokering real estate loans and who is qualified to do business in Ohio that is not organized for the purpose of qualifying to do business as a public insurance adjuster in Ohio, as determined by the Superintendent, and that has been engaged in business as a bona fide lending institution for at least five years, and (2) any member of an affiliated group associated with a lending institution, which member has been a member of the affiliated group for at least five years and which

member is not organized or affiliated with the lending institution for the purpose of qualifying to do business as a public insurance adjuster in Ohio, as determined by the Superintendent. For the purposes of this definition, "affiliated group" means two or more persons related in such a way that one person owns or controls the business operation of another member of the group. In the case of corporations with stock, one corporation owns or controls another if it owns more than 50% of the other corporation's common stock with voting rights. (R.C. 175.01 and 5739.01, not in the bill.)

The bill does not define or use the term "lending institution."

Under current law, a "public insurance adjuster agent" means any person who is a bona fide employee of a public insurance adjuster and who aids in the adjustment, investigation, and in securing of any contract for the adjustment of a loss. The bill does not define this term.

The bill also defines the following terms:

"Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

"Catastrophic disaster" means, according to the federal response plan, an event that results in large numbers of deaths and injuries; causes extensive damage or destruction of facilities that provide and sustain human needs; produces an overwhelming demand on state and local response resources and mechanisms; causes a severe long-term effect on general economic activity; and severely affects state, local, and private sector capabilities to begin and sustain response activities. The President of the United States or the governor of the state or the district in which the disaster occurred has to declare a catastrophic disaster.

"Home state" means the state or territory of the United States, including the District of Columbia, in which a public adjuster maintains the public adjuster's principal place of residence or principal place of business. If neither the state in which the public adjuster maintains the principal place of residence nor the state in which the public adjuster maintains the principal place of business has a substantially similar law governing public adjusters, the public adjuster may declare another state in which the public adjuster becomes licensed and acts as a public adjuster to be the "home state." For business entities, "home state" means the state or territory of the United States, including, but not limited to, the District of Columbia, in which a business entity is domiciled or maintains its principal place of business and is licensed to act as a public adjuster.

"Individual" means a natural person.

"NAIC" means the National Association of Insurance Commissioners.

"Person" as an individual or a business entity.

"Refusal to issue or renew" means the decision of the Superintendent not to process either the initial application for a license as a public adjuster or the renewal of such a license.

"Revocation" means the permanent termination of all authority to hold any license as a public adjuster in Ohio.

"Surrender for cause" means the voluntary termination of all authority to hold any license as a public adjuster in Ohio, in lieu of a revocation or suspension order.

"Suspension" means the termination of all authority to hold any license as a public adjuster in Ohio, for either a specified period of time or an indefinite period of time, and under any terms or conditions determined by the Superintendent.

"Uniform application" means the NAIC uniform individual application for resident and nonresident individuals as applicable to public adjusters or the NAIC uniform business entity application for resident and nonresident business entities as applicable to public adjusters, as amended by the NAIC from time to time.

HISTORY

ACTION	DATE
Introduced	11-28-06

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