

## CHAPTER 72B

### INSURANCE ADJUSTERS

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#### 72B.01 PURPOSE AND SCOPE.

It is the purpose of sections 72B.01 to 72B.14 to provide high quality service to insureds and insurance claimants in the state of Minnesota by providing for well trained adjusters and persons engaged in soliciting business for adjusters, who are qualified to deal with the public in the interest of a fair resolution of insurance claims.

**History:** 1971 c 704 s 1; 1979 c 141 s 1; 1986 c 444; 2010 c 384 s 36

#### 72B.02 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 72B.01 to 72B.14 the terms defined in this section have the meanings ascribed to them unless the context otherwise requires.

Subd. 2. **Person.** "Person" means an individual or business entity.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of commerce or any other person properly acting for the commissioner.

Subd. 4. **Adjuster.** "Adjuster" means a person who on behalf of an insurer or an insured, for compensation as an independent contractor or as an employee of such independent contractor, or as an employee of an insurer, or for a fee or commission, investigates and evaluates claims arising under insurance contracts and negotiates the settlement of such claims.

Subd. 5. **Independent adjuster.** "Independent adjuster" means a person who:

(1) is an individual, a business entity, an independent contractor, or an employee of a contractor, who contracts for compensation with insurers or self-insurers;

(2) is treated for tax purposes by the insurer or self-insurer in a manner that is consistent with the tax treatment of an independent contractor rather than the tax treatment of an employee, as defined in the Internal Revenue Code, United States Code, title 26, subtitle C; and

(3) investigates, negotiates, or settles property, casualty, or workers' compensation claims for insurers or for self-insurers.

Subd. 6. **Public adjuster.** "Public adjuster" means any person who, for compensation or any other thing of value on behalf of the insured:

(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 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.

Subd. 7. **Staff adjuster.** "Staff adjuster" means an adjuster who is a salaried employee of an insurance company or an affiliate of an insurance company and who is engaged in adjusting insured losses solely for that company or other companies under common control or ownership.

Subd. 8. **Public adjuster solicitor.** "Public adjuster solicitor" means any person who for money, commission or any other thing of value solicits in any manner or aids in securing for a public adjuster any contract or agreement for the adjustment of a loss.

Subd. 9. **Appraiser.** "Appraiser" means any person engaged independently, for hire by the public or on the staff of an insurer, in the process of evaluating motor vehicle physical damage, who does not endeavor to determine liability or negotiate the settlement of claims arising under automobile insurance contracts.

Subd. 10. [Repealed, 1979 c 141 s 9]

Subd. 11. [Repealed, 2010 c 384 s 104]

Subd. 12. [Repealed, 2009 c 63 s 77]

Subd. 13. **Appraiser identification.** "Appraiser identification" means a writing including the appraiser's name, place of business, business telephone number, and the name of the insurer or other business entity employing the appraiser, if any.

Subd. 14. **Crop hail adjuster.** "Crop hail adjuster" means a person who for money, commission, or other thing of value acts as an adjuster in regard to insurance policies against crop damage by hail.

Subd. 15. **Business entity.** "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

Subd. 16. **Fingerprint.** "Fingerprint" means an impression of the lines on the finger taken for purpose of identification.

Subd. 17. **Home state.** "Home state" means the District of Columbia and any state or territory of the United States in which an adjuster maintains the adjuster's principal place of residence or business and is licensed to act as a resident adjuster. If the resident state does not license adjusters for the line of authority sought, the adjuster shall designate as the adjuster's home

state any state in which the adjuster is licensed and in good standing.

Subd. 18. **Individual.** "Individual" means a natural person.

Subd. 19. **Insurer.** "Insurer" means an insurance company.

Subd. 20. **Uniform Individual Application.** "Uniform Individual Application" means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Individual Application for resident and nonresident individuals.

Subd. 21. **Uniform Business Entity Application.** "Uniform Business Entity Application" means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Business Entity Application for resident and nonresident business entities.

Subd. 22. **Emergency situation.** An "emergency situation" means the occurrence of insured losses of such a number or severity that the ordinary staff adjuster personnel complement of the insurer and the available independent adjusters could not adjust all of the losses resulting from a common cause or related causes in reasonable time.

**History:** 1971 c 704 s 2; 1980 c 456 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1992 c 564 art 1 s 48; 2007 c 104 s 20; 2009 c 63 s 32-43,78

### 72B.03 LICENSES.

Subdivision 1. **Requirement; exceptions.** (a) A person shall not act or hold out as an independent adjuster, public adjuster, or public adjuster solicitor unless the person is licensed as an independent adjuster, public adjuster, or public adjuster solicitor in accordance with this chapter, or is exempt from licensure as an independent adjuster, public adjuster, or public adjuster solicitor under this chapter.

(b) The definition of adjuster does not include, and a license as an adjuster is not required of, the following:

(1) attorneys-at-law admitted to practice in this state, when acting in the attorney's professional capacity as an attorney;

(2) a person employed solely to obtain facts surrounding a claim or to furnish technical assistance to a licensed adjuster;

(3) an individual who is employed to investigate suspected fraudulent insurance claims but who does not adjust losses or determine claims payments;

(4) a person who solely performs executive, administrative, managerial, or clerical duties or any combination of these duties and who does not investigate, negotiate, or settle claims with policyholders, claimants, or their legal representative;

(5) a licensed health care provider or its employee who provides managed care services so long as the services do not include the determination of compensability;

(6) a managed care organization or any of its employees or an employee of any organization providing managed care services so long as the services do not include the determination of compensability;

(7) a person who settles only reinsurance or subrogation claims;

(8) an officer, director, manager, or employee of an authorized insurer, a surplus lines insurer, a risk retention group, or an attorney-in-fact of a reciprocal insurer;

(9) a United States manager of the United States branch of an alien insurer;

(10) a person who investigates, negotiates, or settles life, accident and health, annuity, or disability insurance claims;

(11) an individual employee, under a self-insured arrangement, who adjusts claims on behalf of the employee's employer;

(12) a licensed insurance producer, attorney-in-fact of a reciprocal insurer, or managing general agent of the insurer to whom claim authority has been granted by the insurer;

(13) a person authorized to adjust workers' compensation or disability claims under the authority of a third-party administrator license pursuant to section 60A.23, subdivision 8.

**Subd. 2. Classes of licenses.** (a) Unless denied licensure pursuant to section 72B.08, persons who have met the requirements of section 72B.041 must be issued an adjuster license. There shall be four classes of licenses, as follows:

(1) independent adjuster's license;

(2) public adjuster's license;

(3) public adjuster solicitor's license; and

(4) crop hail adjuster's license.

(b) An independent adjuster and a public adjuster may qualify for a license in one or more of the following lines of authority:

(1) property and casualty; or

(2) workers' compensation; or

(3) crop.

(c) Any person holding a license pursuant to this section is not required to hold any other independent adjuster, public adjuster, insurance, or self-insurance administrator license in this state pursuant to section 60A.23, subdivision 8, or any other provision, provided that the person does not act as an adjuster with respect to life, health, or annuity insurance, other than disability insurance.

(d) An adjuster license remains in effect unless probated, suspended, revoked, or refused as long as the fee set forth in section 72B.041, subdivision 9, is paid and all other requirements for license renewal are met by the due date, otherwise, the license expires.

(e) An adjuster whose license expires may, within 12 months of the renewal date, be reissued an adjuster license upon receipt of the renewal request, as prescribed by the commissioner; however, a penalty in the amount of double the unpaid renewal fee is required to reissue the expired license.

(f) An adjuster who is unable to comply with license renewal procedures and requirements due to military service, long-term medical disability, or some other extenuating circumstance may request a waiver of same and a waiver of any examination requirement, fine, or other sanction imposed for failure to comply with renewal procedures.

(g) An adjuster is subject to sections 72A.17 to 72A.32.

(h) The adjuster must inform the commissioner by any means acceptable of any change in resident or business addresses for the home state or in legal name within 30 days of the change.

(i) The license must contain the licensee's name, address, and personal identification number; the dates of issuance and expiration; and any other information the commissioner deems necessary.

(j) In order to assist in the performance of the commissioner's duties, the commissioner may contract with nongovernmental entities, including the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, to perform any ministerial functions related to licensing that the commissioner may deem appropriate, including the collection of fees and data.

**Subd. 3. Payment for services; unlawful practice.** No insurer, agent, or other representative of an insurer nor any adjuster shall pay any fee or other compensation to any person for acting as an adjuster, or a public adjuster solicitor, except to a person duly licensed to so act or to a person not required to be licensed by sections 72B.01 to 72B.14; and it shall be unlawful for any person to act as an independent adjuster, a public adjuster or a public adjuster solicitor, who is not duly licensed, or excluded from the licensing requirement.

**History:** 1971 c 704 s 3; 1975 c 359 s 23; 1979 c 141 s 2; 1986 c 444; 1992 c 564 art 1 s 49; 1994 c 485 s 58; 2009 c 63 s 44,78; 2010 c 384 s 37

**72B.04** [Repealed, 2009 c 63 s 77,78; 2010 c 384 s 104]

#### **72B.041 RESIDENT ADJUSTER LICENSE PROCEDURE AND REQUIREMENTS; EXAMINATIONS; FEES.**

Subdivision 1. **Application.** (a) An individual applying for a resident adjuster license must make application to the commissioner on the appropriate National Association of Insurance Commissioners (NAIC) Uniform Individual Application in a format prescribed by the commissioner and declare under penalty of suspension, revocation, or refusal of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner must find that the individual:

- (1) is at least 18 years of age;
- (2) is eligible to designate this state as the individual's home state;
- (3) is trustworthy, reliable, and of good reputation, evidence of which must be determined by the commissioner;
- (4) has not committed any act that is a ground for probation, suspension, revocation, or refusal of an adjuster's license as set forth in section 72B.08;
- (5) has successfully passed the examination for the lines of authority for which the individual has applied; and
- (6) has paid the fees set forth in subdivision 9.

An applicant for licensing as a public adjuster solicitor under sections 72B.01 to 72B.14 must be at least 18 years of age, must be competent and trustworthy, and must not have been engaged in any practice which would be grounds for suspension or revocation of a license under sections 72B.01 to 72B.14 within the three years next preceding the date of the application.

In the case of any applicant who has been convicted of a felony within the ten years next preceding the date of the application, and who in the judgment of the commissioner, meets the other qualifications, the commissioner may impose the additional requirement of the filing of a bond in accordance with the requirements of section 72B.08, subdivision 8.

(b) A business entity applying for a resident adjuster license must make application to the commissioner on the appropriate NAIC Uniform Business Entity Application in a format prescribed by the commissioner and declare under penalty of suspension, revocation, or refusal of the license that the statements made in the application are true, correct, and complete to the best of the business entity's knowledge and belief. Before approving the application, the commissioner shall find that the business entity:

- (1) is eligible to designate this state as its home state;
- (2) has designated a licensed independent or public adjuster responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state;
- (3) has not committed an act that is a ground for probation, suspension, revocation, or refusal of an adjuster's license as set forth in section 72B.08; and
- (4) has paid the fees set forth in subdivision 9.

Subd. 2. **Criminal history record check; fingerprints.** (a) An individual applying for a resident independent or public adjuster license must:

- (1) consent to a criminal history record check;
- (2) submit a fingerprint card in a form acceptable to the commissioner; and
- (3) pay the fee required to perform criminal history record checks with the Minnesota Bureau of Criminal Apprehension and the Federal Bureau of Investigation.

(b) The commissioner may contract for the collection and transmission of fingerprints required under this chapter and may order the fee for collecting and transmitting fingerprints to be payable directly to the contractor by the applicant. The commissioner may agree to a reasonable fingerprinting fee to be charged by the contractor.

(c) The commissioner must treat and maintain an applicant's fingerprints and any criminal history record information obtained under this chapter as confidential and must apply security measures consistent with the standards specified by the Criminal Justice Information Services Division of the Federal Bureau of Investigation for the electronic storage of fingerprints and necessary identifying information. The commissioner must limit the use of records solely to the purposes authorized in this chapter. The fingerprints and any criminal history record information must not be subject to subpoena, other than one issued in a criminal action or investigation.

(d) The commissioner may receive criminal history record information from another government agency in lieu of the Minnesota Bureau of Criminal Apprehension.

(e) The commissioner may require any documents reasonably necessary to verify the information contained in the application.

(f) All applicants for a license as a public adjuster must attach to their application evidence that the bonding requirement in subdivision 3 has been satisfied.

Subd. 3. **Bonding.** No initial or renewal public adjuster's license shall be issued to any applicant unless there is on file with the commissioner a good and sufficient surety bond, issued by an insurer authorized to do business in this state. The bond shall be in the amount of \$10,000 with the state of Minnesota as obligee, conditioned for the prompt payment to any person entitled thereto, other than a partner or associate of the applicant, of any amounts received by the applicant or to protect any person other than a partner or associate of the applicant from loss resulting from fraud, dishonesty, forgery or theft in connection with the applicant's duties under sections 72B.01 to 72B.14; provided, however, that the aggregate liability of the surety to all persons for all losses

shall, in no event, exceed the amount of such bond. The bond shall remain in effect during the term of the license, or until the surety is released from liability by the commissioner, or until canceled by the surety. The surety may cancel a bond, without prejudice to any liability which occurred prior to the cancellation, by giving at least 30 days' written notice to the commissioner. In the event that the required bond is terminated, the public adjuster's license shall automatically be suspended until a new bond is filed with the commissioner.

**Subd. 4. Examinations.** (a) An individual applying for an independent or public adjuster license under this chapter must pass a written examination unless exempt pursuant to subdivision 5. The examination must test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an independent or public adjuster, and the insurance laws and regulations of this state. Examinations required by this subdivision must be developed and conducted under rules and regulations prescribed by the commissioner.

(b) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations.

(c) 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.

(d) The commissioner may by rule determine the period of time between failure of an examination and reexamination.

(e) A person shall not be eligible to take an examination if that person's license as an independent adjuster or public adjuster has been revoked in this or any other state within the three years next preceding the date of the application.

(f) No examination shall be required for the timely renewal of a license, unless the license has been revoked.

**Subd. 5. Exceptions.** (a) An individual who applies for an adjuster license in this state who is or was licensed in another state for the same lines of authority based on an adjuster examination is not required to complete a prelicensing examination. This exemption is only available if the person is currently licensed in another state or if that state license has expired and the application is received by this state within 90 days of expiration. The applicant must provide certification from the other state that the applicant's license is currently in good standing or was in good standing at the time of expiration or certification from the other state that its producer database records, maintained by the NAIC, its affiliates, or its subsidiaries, indicate that the applicant or the applicant's company is or was licensed in good standing. The certification must be of a license with the same line of authority for which the individual has applied.

(b) A person licensed as an adjuster in another state based on an adjuster examination who establishes legal residency in this state must make application within 90 days to become a resident adjuster licensee pursuant to this section, with the exception that no prelicensing examination is required of this person.

(c) A person who has held a license of any given class or in any field or fields within three years prior to the application shall be entitled to a renewal of the license in the same class or in the same fields without taking an examination.

(d) A person applying for a license as a crop hail adjuster shall not be required to comply with the requirements of subdivision 4.

Subd. 6. **License term.** (a) Initial licenses issued to a business entity under this section are valid for a period not to exceed 24 months. Each initial license must expire on October 31 of the expiration year assigned by the commissioner. Initial licenses issued to an individual adjuster under this chapter before August 1, 2010, are valid for a period not to exceed 24 months and expire on October 31 of the renewal year assigned by the commissioner. Each individual license initially issued or initially renewed on or after August 1, 2010, must expire on the last day of the birth month of the adjuster in the year that will result in the term of the license being at least 12 months, but no more than 24 months. Beginning with the first license expiration on the last day of the birth month of an individual adjuster as set forth in this subdivision, all such licenses must after this date expire biennially on the last day of the birth month of the individual adjuster that is two years subsequent to the preceding expiration date.

(b) Licenses issued under this section may be renewed upon the timely filing of an application for renewal.

Subd. 7. **Renewal.** An application for renewal of a license issued under sections 72B.01 to 72B.14 shall be on a form prescribed by the commissioner and shall be filed with the commissioner with payment of the renewal fee prior to the expiration date of the license.

Subd. 8. **Notice of changes.** Each licensee or holder of a temporary permit shall give written notice to the commissioner of any change in name, or residence address not later than ten days after such change. The commissioner may, upon receipt of such notice, issue an amendment to the license incorporating such changes.

Subd. 9. **Fees.** A fee of \$50 is imposed for each initial license or temporary permit and \$50 for each renewal thereof or amendment thereto. A fee of \$20 is imposed for the registration of each nonlicensed adjuster who is required to register under section 72B.06. All fees shall be transmitted to the commissioner and shall be payable to the Department of Commerce.

**History:** 2009 c 63 s 45,78

#### **72B.045 CONTINUING EDUCATION.**

Subdivision 1. **Requirement.** An individual who holds an independent or public adjuster license and who is not exempt under this section must satisfactorily complete a minimum of 24 hours of continuing education courses, of which three hours must be in ethics, reported to the commissioner on a biennial basis in conjunction with the individual's license renewal cycle.

Subd. 2. **Exceptions.** This section does not apply to:

(1) a licensee not licensed for one full year prior to the end of the applicable continuing education biennium; or

(2) a licensee holding a nonresident adjuster license who has met the continuing education requirements of the licensee's designated home state.

**History:** 2009 c 63 s 46,78; 2010 c 384 s 38

#### **72B.05 NONRESIDENTS.**

(a) Unless refused licensure pursuant to section 72B.08, a nonresident person shall receive a nonresident adjuster license if:

(1) the person is currently licensed in good standing as an adjuster in the person's resident or home state;

(2) the person has submitted the proper request for licensure and has paid the fees required by section 72B.041, subdivision 9;

(3) the person has submitted or transmitted to the commissioner the appropriate completed application for licensure; and

(4) the person's designated home state awards nonresident adjuster licenses to persons of this state on the same basis.

(b) The commissioner may verify the adjuster's licensing status through any appropriate database, including the producer database maintained by the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, or may request certification of good standing as described in section 72B.041, subdivision 5.

(c) As a condition to the continuation of a nonresident adjuster license, the licensee must maintain a resident adjuster license in the licensee's home state. The nonresident adjuster license issued under this chapter must terminate and be surrendered immediately to the commissioner if the resident adjuster license terminates for any reason, unless the termination is due to the adjuster being issued a new resident adjuster license in the adjuster's new home state. The new state resident adjuster license must have reciprocity with the licensing nonresident states, otherwise, the nonresident adjuster license must terminate. Notice of resident adjuster license termination must be given to any state that issued a nonresident adjuster license. Notice must be given within 30 days of the termination date; if terminated for change in the resident home state, then the notice must include both the previous and current address. Maintaining a resident adjuster license is required for the nonresident adjuster license to remain valid.

**History:** 1971 c 704 s 5; 1986 c 444; 1995 c 258 s 54; 2009 c 63 s 47,78

#### **72B.06 CATASTROPHE OR EMERGENCY SITUATIONS.**

(a) For purposes of this chapter, a catastrophe exists when, due to a specific, infrequent, and sudden natural or man-made disaster or phenomenon, there have arisen losses to property in Minnesota that are covered by insurance, and the losses are so numerous and severe that resolution of claims related to such covered property losses will not occur expeditiously without the licensing of emergency independent adjusters due to the magnitude of the catastrophic damage. A failure of claims to be resolved expeditiously shall exist upon an insurer's filing with the department a written statement that one of the following conditions exists: (1) the insurer expects to incur at least 500 claims as a result of the event; or (2) the magnitude of the event is expected to generate twice the mean number of claims for one month for the affected area. Such written statement may be sent electronically to the commissioner. An insurer must notify the commissioner via registration of each independent adjuster not already licensed in Minnesota, that will act as an emergency independent adjuster on behalf of the insurer pursuant to paragraph (b).

(b) A person who is otherwise qualified to adjust claims, but not already licensed in Minnesota, may act as an emergency independent adjuster and adjust claims, if, within five days of deployment to adjust claims arising from the catastrophe, the insurer or the independent adjuster's employer, in the notification required by paragraph (a), notifies the commissioner by providing the following information in a format prescribed by the commissioner:

- (1) the name of the individual;
- (2) the Social Security number of the individual;
- (3) the name of the insurer the independent adjuster will represent;

(4) the effective date of the contract between the insurer and independent adjuster or the independent adjuster's employer;

(5) the catastrophe loss control number;

(6) the catastrophe name; and

(7) other information the commissioner deems necessary.

(c) An emergency independent adjuster's license or registration remains in force for 180 days; such license or registration shall be effective for all catastrophes described in paragraph (a), clauses (1) and (2). Such license or registration may be extended for 180 days.

The commissioner may summarily suspend or revoke the right of any person adjusting in this state under the authority of this section to continue to adjust in this state, if the commissioner finds that that person has engaged in any of the practices forbidden to a licensed adjuster under sections 72B.01 to 72B.14. Notice of such suspension or revocation may be given personally or by mail sent to the temporary address stated in the registration and to the insurer or independent adjusting company who submitted the independent adjuster information.

**History:** 1971 c 704 s 6; 1986 c 444; 2009 c 63 s 48,78; 2010 c 384 s 39

**72B.07** [Repealed, 1994 c 485 s 66]

**72B.08 DENIAL, SUSPENSION AND REVOCATION OF LICENSES.**

Subdivision 1. **Causes.** The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an adjuster's license or temporary permit or may levy a civil penalty according to section 45.027, subdivision 6, or any combination of the above actions for any of the following causes:

(1) failure to pass a required examination;

(2) obtaining or attempting to obtain a license through misrepresentation or fraud providing incorrect, misleading, incomplete, or materially untrue information in the license application;

(3) violating any insurance laws, rules, subpoena, or order of the commissioner or of another state's insurance commissioner or any provision of sections 72B.01 to 72B.14;

(4) improperly withholding, misappropriating, or converting any money or properties received in the course of doing insurance business;

(5) intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance, with intent to deceive, or engaging in, or attempting to engage in, any fraudulent transaction with respect to a claim or loss that the licensee or holder of a temporary permit is adjusting and, in the case of a public adjuster solicitor, misrepresenting the services offered or the fees or commission to be charged;

(6) conviction of a felony under the laws of this state, any other state, the United States, or any foreign country;

(7) the licensee or holder of a temporary permit has demonstrated incompetency or untrustworthiness to act as an adjuster or public adjuster solicitor;

(8) refusal to comply with any lawful order of the commissioner;

(9) having admitted or been found to have committed any insurance unfair trade practice or fraud;

(10) using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility, in the conduct of insurance business in this state or elsewhere;

(11) having an insurance license, or its equivalent, probated, suspended, revoked, or refused in any other state, province, district, or territory;

(12) forging another's name to any document related to an insurance transaction;

(13) cheating, including improperly using notes or any other reference material, to complete an examination for an insurance license;

(14) failing to comply with an administrative or court order imposing a child support obligation; or

(15) failing to pay state income tax or comply with any administrative or court order directing payment of state income tax which remains unpaid.

Subd. 2. **Notice.** In the event that the action by the commissioner is to refuse application for licensure or renewal of an existing license, the commissioner must notify the applicant or licensee in writing, advising of the reason for the refusal.

Subd. 3. **Hearing.** Except when an application is rejected for failure to pass a required examination, the person aggrieved by the action of the commissioner shall be entitled to a hearing before the commissioner or the commissioner's delegate, provided that such person files a written request for such hearing with the commissioner prior to the expiration of 30 days from the date of notice specified in subdivision 2. If no hearing is requested within 30 days from the date of the notice, the action taken by the commissioner shall continue in effect until modified or vacated. If a hearing is timely requested, the commissioner shall set a date for such hearing not later than 30 days after the date of receipt of the request for hearing. Pending the hearing or any judicial review of such hearing, the commissioner may modify or vacate the action taken or extend it until final determination.

After the hearing, the commissioner shall enter an order either vacating the prior action, confirming the prior action or otherwise disposing of the matter as the facts require.

Subd. 4. **Suspension or revocation of license or permit.** When the commissioner has information, which if true, would be grounds for suspension, revocation, or refusal to issue a renewal license or a temporary permit, the commissioner may order the licensee or holder of the temporary permit to appear for a hearing pursuant to chapter 14, to determine the facts of the case and to determine whether the license or permit should be suspended or revoked, or whether it should not be renewed. The order shall fix the time and place for the hearing. After the hearing, the commissioner shall enter an order either dismissing the matter or suspending or revoking the license or temporary permit, or otherwise disposing of the matter as the facts require. Pending the results of the hearing, the licensee or permit holder may continue to act under the license or permit.

The license of a business entity may be probated, suspended, revoked, or refused if the commissioner finds, after a hearing, that:

(1) its designated individual licensee's violation occurred while acting on behalf of or representing the business entity;

(2) the violation was known or should have been known by one or more of the business entity's partners, officers, or managers;

(3) the violation was not reported to the commissioner; and

(4) corrective action was not taken.

In addition to or in lieu of any applicable probation, suspension, revocation, or refusal, a person may, after a hearing, additionally be subject to a civil fine according to section 45.027, subdivision 6.

The commissioner retains the authority to enforce the provisions of and impose any penalty or remedy authorized by this chapter and section 45.027, subdivision 6, against any person who is under investigation for or charged with a violation of this chapter or sections 72A.17 to 72A.32, even if the person's license or registration has been surrendered or has expired by operation of law.

Subd. 5. **Judicial review.** Any final order of the commissioner shall be subject to judicial review.

Subd. 6. **Procedure.** Any hearing or judicial review shall be in accordance with the contested case provisions of chapter 14.

Subd. 7. **Voluntary action by licensee or holder of permit.** The commissioner may request a voluntary revocation or suspension of a license or temporary permit and may enter into stipulations in accordance with the request whereby the licensee or holder of a temporary permit shall waive all further right to a hearing or judicial review.

Subd. 8. **Bond.** In the case of any licensee or permit holder who has had a license or permit suspended or revoked or whose license renewal has been prohibited by a lawful order of the commissioner, the commissioner may condition the issuance of a new license on the filing of a surety bond in an amount not to exceed \$10,000, made and conditioned in accordance with the requirements of section 72B.041, subdivision 3, relating to public adjusters' bonds. Nothing in this subdivision shall reduce or alter the bonding requirements for a public adjuster.

Subd. 9. **Civil and criminal liability.** This section shall not relieve a person from civil liability or from criminal prosecution under sections 72B.01 to 72B.14 or any other law of this state.

**History:** 1971 c 704 s 8; 1979 c 141 s 7; 1982 c 424 s 130; 1986 c 444; 2009 c 63 s 49-51,78; 2010 c 384 s 40

**72B.09** [Repealed, 1976 c 149 s 63]

## **72B.091 DAMAGE APPRAISALS; ADJUSTMENTS; DUTIES OF APPRAISERS, ADJUSTERS, AND INSURERS.**

Subdivision 1. **Appraiser's identification.** Each appraiser while engaged in appraisal duties shall carry appraiser identification and shall display it upon request to an owner whose vehicle is being inspected, to the repair shop representative involved, or to any commissioner of commerce's representative.

Subd. 2. **Appraisal; copies and content.** The appraiser shall provide one legible copy of the appraisal to the vehicle owner and one legible copy of the appraisal to the repair shop designated by the owner if requested by the repair shop. The motor vehicle repair shop shall provide the vehicle owner and the insurance company or companies involved in the loss one legible copy of the appraisal. This appraisal shall include an itemized listing of those parts to be repaired and those parts to be replaced by new, used, rebuilt, reconditioned or replated parts. The appraisal shall contain the name of the insurance company ordering it, if any, the insurance company's address and telephone number, its file number, the appraiser's name, telephone

number, and the proper identification of the vehicle being inspected. The appraisal shall indicate all significant old and unrelated damages and shall include an itemized listing of all damages, specifying those parts to be repaired and those parts to be replaced by new, used, rebuilt, reconditioned, or replated parts. The appraisal must disclose to the vehicle owner any parts to be used, other than window glass, which are not original equipment parts or which are not covered by the manufacturer's warranty on such parts.

Subd. 3. **No specified repairer.** No appraiser, adjuster, or that person's employer shall require that repairs be made in any specified repair facility.

Subd. 4. **Reinspections.** Each appraiser shall promptly reinspect damaged vehicles when supplementary allowances are requested by the repair shop or when the amount or extent of damages is in dispute. Reinspection of any damage on a damaged vehicle may be waived if authorized by the insurer by any oral or written communication.

Subd. 5. **Auto salvage.** No appraiser or adjuster for personal gain shall receive or trade in auto salvage if the salvage is obtained as a result of that person's appraisals.

**History:** 1980 c 456 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1987 c 64 s 2

## **72B.092 MOTOR VEHICLE INSURANCE ADJUSTMENTS; PROHIBITIONS.**

Subdivision 1. **Prohibitions on insurer.** No adjuster or insurer, director, officer, broker, agent, attorney-in-fact, employee, or other representative of an insurer shall in collision cases:

- (1) limit the freedom of an insured or claimant to choose the shop;
- (2) require that an insured or claimant present the claim or the automobile for loss adjustment or inspection at a "drive-in" claim center or any other similar facility solely under the control of the insurer;
- (3) engage in boycotts, intimidation or coercive tactics in negotiating repairs to damaged motor vehicles which they insure or are liable to claimants to have repaired;
- (4) attempt to secure, except in an emergency, the insured's or claimant's signature authorizing the party securing the signature to act in behalf of the insured or claimant in selection of a repair shop facility;
- (5) adjust a damage appraisal of a repair shop when the extent of damage is in dispute without conducting a physical inspection of the vehicle;
- (6) specify the use of a particular vendor for the procurement of parts or other materials necessary for the satisfactory repair of the vehicle. This clause does not require the insurer to pay more than a reasonable market price for parts of like kind and quality in adjusting a claim; or
- (7) unilaterally and arbitrarily disregard a repair operation or cost identified by an estimating system, which an insurer and collision repair facility have agreed to utilize in determining the cost of repair.

Subd. 2. **Boycotts.** No motor vehicle repair shop shall in any way coerce, or intimidate a motor vehicle owner to boycott an insurer's "drive-in" claim center or similar facility.

Subd. 3. **Owner's signature.** No motor vehicle repair shop shall attempt to secure, except in an emergency, the vehicle owner's signature authorizing the party securing the signature to act in behalf of the owner in selection of a repair shop.

Subd. 4. **Access to repair shop.** An insurer's representative shall not be unreasonably denied access to a motor vehicle repair shop during normal business hours for the purpose of inspecting or reinspecting damaged vehicles.

Subd. 5. **Storage and towing charges.** When a damaged vehicle is towed to a motor vehicle repair shop, the storage and towing charges shall not exceed the usual and customary charges for the towing and storage of undamaged vehicles in the area except if the vehicle, due to its damaged condition, requires special handling in the towing or storage, an added charge may be made.

**History:** 1980 c 456 s 3; 1986 c 444; 2007 c 80 s 1; 2008 c 284 s 1

#### **72B.10 STAFF ADJUSTERS.**

A staff adjuster who adjusts losses or claims in this state shall not be subject to the application, licensing, or examination requirements or other qualifications set forth in sections 72B.01 to 72B.14. Such a staff adjuster shall not, however, engage in any of the practices forbidden to a licensee under section 72B.08, subdivision 1, clause (c), (d), (e), (f), (g) or (h). If the commissioner has information, which if true, would establish that a staff adjuster has engaged or is engaging in any such prohibited practices, the commissioner may issue an order for a hearing to determine the facts involved. The order shall fix the time and place for hearing. The staff adjuster and one or more representatives of the insurer or insurers employing the staff adjuster shall make an appearance at the hearing unless the commissioner expressly waives the appearance of one or more such parties. If, following the hearing, the commissioner determines that the staff adjuster has engaged or is engaging in any prohibited practices, the commissioner may impose a fine, not in excess of \$500, on the staff adjuster or on the employing insurer or insurers, or on both such parties. In addition, the commissioner may order the employing insurer to suspend the staff adjuster from all duties for such period as the commissioner may deem appropriate.

Any final order of the commissioner shall be subject to judicial review. Any hearing or judicial review under this section shall be in accordance with the contested case provisions of chapter 14.

**History:** 1971 c 704 s 10; 1979 c 141 s 8; 1982 c 424 s 130; 1986 c 444

#### **72B.105 RECORDS OF INDEPENDENT ADJUSTERS TO BE RETAINED.**

An independent adjuster must maintain a copy of each contract between the independent adjuster and the insurer or self-insurer and comply with the record retention policy as agreed to in that contract.

**History:** 2009 c 63 s 52,78

#### **72B.106 STANDARDS OF CONDUCT OF INDEPENDENT ADJUSTERS.**

(a) An independent adjuster must be honest and fair in all communications with the insured, the insurer, and the public.

(b) An independent adjuster must give policyholders and claimants prompt, knowledgeable service and courteous, fair, and objective treatment at all times.

(c) An independent adjuster must not give legal advice and must not deal directly with any policyholder or claimant who is represented by legal counsel without the consent for the legal counsel involved.

(d) An independent adjuster must comply with all local, state, and federal privacy and information security laws, if applicable.

(e) An independent adjuster must identify as an independent adjuster and, if applicable, identify the independent adjuster's employer when dealing with any policyholder or claimant.

(f) An independent adjuster must not have any financial interest in any adjustment or acquire for the independent adjuster or any person any interest or title in salvage, without first receiving written authority from the principal.

**History:** 2009 c 63 s 53,78

#### **72B.107 REPORTING OF ACTIONS OF ADJUSTER.**

(a) An adjuster must report to the commissioner any administrative action taken against the adjuster in another jurisdiction or by another governmental agency in this state within 30 days of the final disposition of the matter. The report must include a copy of the order or consent order and any other relevant legal documents.

(b) An adjuster must report to the commissioner any criminal action taken against the adjuster in this or any jurisdiction within 30 days of the final disposition of the criminal matter. The report must include a copy of the initial complaint filed, the final order issued by the court, and any other relevant legal documents.

**History:** 2009 c 63 s 54,78

#### **72B.11 PRODUCTION OF RECORDS.**

The commissioner may, by order, require any licensee or permit holder to produce any records relating to activities under that person's license or permit, and may examine persons under oath to determine questions arising under a person's status as a licensee or permit holder.

**History:** 1971 c 704 s 11; 1986 c 444

#### **72B.12 RULES.**

The commissioner may promulgate rules to carry out the purpose of sections 72B.01 to 72B.14, pursuant to chapter 14.

**History:** 1971 c 704 s 12; 1982 c 424 s 130; 1985 c 248 s 70

#### **72B.13 ACTING WITHIN CONTRACT AND LAW.**

Every adjuster shall investigate or adjust every claim, damage or loss made or occurring under an insurance contract in accordance with the terms and conditions of the contract and of the applicable laws of this state.

**History:** 1971 c 704 s 13

#### **72B.135 PUBLIC ADJUSTERS.**

Subdivision 1. **Insured's right to cancel.** An insured who has entered into a contract with a public adjuster involving the business for which the person was licensed, has the right to cancel the contract within 72 hours after the contract has been signed. Cancellation is evidenced by the insured giving written notice of cancellation to the public adjuster at the address stated in the contract. Notice of cancellation, if given by mail, is effective upon deposit in a mailbox, properly addressed to the public adjuster and postage prepaid. Notice of cancellation need not take a particular form and is sufficient if it indicates, by any form of written expression, the intention of the insured not to be bound by the contract.

Subd. 2. **Writing required; notice of right to cancel; notice of cancellation.** (a) Before

entering a contract referred to in subdivision 1, the public adjuster must:

(1) furnish the insured with a statement in boldface type of a minimum size of ten points, in substantially the following form:

"You, the insured, may cancel this contract at any time within 72 hours after the contract has been signed between the insured and the public adjuster. See attached notice of cancellation form for an explanation of this right."; and

(2) furnish each insured, a fully completed form in duplicate, captioned, "NOTICE OF CANCELLATION," which shall be attached to the contract and easily detachable, and which shall contain in boldface type of a minimum size of ten points the following information and statements:

"NOTICE OF CANCELLATION

.....

(enter date of contract)

If you do not want to go forward with the contract with the public adjuster, you may cancel the contract by mailing or delivering 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). If you cancel, any payments made by you under the contract will be returned within ten business days following receipt by the public adjuster of your cancellation notice.

I HEREBY CANCEL THIS TRANSACTION.

.....

(date)

.....

(Insured's signature)"

Subd. 3. **Return of payments; compensation.** Within ten days after a contract referred to in subdivision 1 has been canceled, the public adjuster must tender to the insured any payments made by the insured and any note or other evidence of indebtedness. However, if the public adjuster has performed any emergency services within the 72-hour period, the public adjuster is entitled to compensation for such services. Emergency services shall mean the removal of water, boarding up a building, and reconnecting lights and heat.

Subd. 4. **Prohibited practices.** No public adjuster shall:

(1) pay money or give anything of value to a person in consideration of a direct or indirect referral of a client or potential client;

(2) pay money or give anything of value to a person as an inducement to refer business or clients;

(3) rebate to a client a part of a fee specified in an employment contract;

(4) initiate contact with a prospective client between the hours of 8 p.m. and 8 a.m.;

(5) split the fee received or pay money to a person for services rendered to a client unless the other person is also licensed as a public adjuster;

(6) have an interest directly or indirectly in a construction firm, salvage firm, or appraisal firm. "Firm" includes a corporation, partnership, association, or individual firm;

(7) in connection with the transaction of business as a public adjuster, make a willful or knowing misrepresentation of facts or advise a person on questions of law;

(8) make willful or knowing false statements about an insurance company or its employees, agents, or representatives;

(9) solicit employment of a client in connection with a loss that is the subject of an employment contract with another public adjuster;

(10) represent both an insurer and insured simultaneously; or

(11) advance money to a client pending the settlement of a loss where the amount would be included in a final settlement.

Subd. 5. **Disclosures.** (a) A public adjuster shall disclose in writing to the client any interest the public adjuster has in loss proceeds other than those acquired by the public adjuster's employment contract.

(b) A public adjuster in soliciting a client for employment shall display a license and immediately inform the client that the adjuster does not represent an insurance company or insurance company adjusting firm. The adjuster shall inform the client that services are available for a fee to be paid by the client and shall give the client a card identifying the public adjuster. The public adjuster shall disclose in writing to the client the fee charged by the public adjuster.

Subd. 6. **Records; contracts.** (a) A public adjuster shall maintain an office that contains the records of all documents pertaining to the settlement of the claim and files of all clients. The records must be available for inspection by an authorized examiner or employee of the Commerce Department. The records will be kept by the public adjuster for at least five years after the end of the contracted employment period.

(b) An employment contract used by a public adjuster is valid only if signed by an insured and the property owner of the property involved, or an authorized agent or representative.

**History:** 1988 c 663 s 1; 1990 c 514 s 1-3; 2009 c 63 s 55-57,78

### 72B.136 ESCROW OR TRUST ACCOUNTS.

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 non-interest-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.

**History:** 2009 c 63 s 58,78

### 72B.14 VIOLATIONS.

A person who violates sections 72B.01 to 72B.14, or the terms of any license or permit under sections 72B.01 to 72B.14, or any lawful order of the commissioner in accordance with sections 72B.01 to 72B.14, shall be subject to a fine imposed by the commissioner, not in excess of \$500, which may be imposed in addition to the penalties prescribed in the provisions dealing with the suspension or revocation of licenses or permits.

**History:** 1971 c 704 s 14