

As Introduced

**126th General Assembly
Regular Session
2005-2006**

S. B. No. 399

Senator Stivers

—

A BILL

To amend section 4749.01 and to enact new sections 1
3951.01 to 3951.04, 3951.041, and 3951.05 to 2
3951.10 and sections 3951.11 to 3951.18, and to 3
repeal sections 3951.01, 3951.02, 3951.03, 4
3951.04, 3951.041, 3951.05, 3951.06, 3951.07, 5
3951.08, 3951.09, 3951.10, and 3951.99 of the 6
Revised Code to make changes to the Public 7
Insurance Adjuster Law. 8

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 4749.01 be amended and new sections 9
3951.01, 3951.02, 3951.03, 3951.04, 3951.041, 3951.05, 3951.06, 10
3951.07, 3951.08, 3951.09, and 3951.10 and sections 3951.11, 11
3951.12, 3951.13, 3951.14, 3951.15, 3951.16, 3951.17, and 3951.18 12
of the Revised Code be enacted to read as follows: 13

Sec. 3951.01. As used in sections 3951.01 to 3951.18 of the 14
Revised Code: 15

(A) "Business entity" means a corporation, association, 16
partnership, limited liability company, limited liability 17
partnership, or other legal entity. 18

(B) "Catastrophic disaster," according to the federal 19
response plan, means an event that results in large numbers of 20

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 shall declare a
catastrophic disaster.

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(C) "Home state" means the state or territory of the United
States, including, but not limited to, 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.

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(D) "Individual" means a natural person.

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(E) "NAIC" means the national association of insurance
commissioners.

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(F) "Person" means an individual or a business entity.

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(G) "Public adjuster" means any person who, for compensation
or any other thing of value on behalf of the insured, does any of
the following:

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(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; 52
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(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; 57
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(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. 62
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(H) "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. 68
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Sec. 3951.02. A person shall not act or hold oneself out as a public adjuster in this state unless the person is licensed as a public adjuster in accordance with this chapter. 74
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Sec. 3951.03. Section 3951.02 of the Revised Code does not apply to any of the following: 77
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(A) An attorney at law admitted to practice in this state, when acting in the attorney's professional capacity as an attorney; 79
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(B) A person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract; 82
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(C) A person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster, including, but not limited to, photographers, estimators, private investigators, engineers, and handwriting experts; 84
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(D) A licensed health care provider, or employee of a licensed health care provider, who prepares or files a health claim form on behalf of a patient; 89
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(E) A person who settles subrogation claims between insurers. 92

Sec. 3951.04. (A) An individual or business entity shall apply for a resident or nonresident public adjuster license by submitting to the superintendent of insurance the applicable uniform application or any other application prescribed by the superintendent, any additional information required by the superintendent, and 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. A business entity shall designate a public adjuster licensed pursuant to this chapter to be responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state. 93
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(B) The superintendent may require any applicant to produce any documents reasonably necessary to verify the information contained in the application. 106
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(C) Each applicant for licensure as a public adjuster shall pay a nonrefundable one-hundred-dollar application fee to the superintendent. 109
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Sec. 3951.041. (A) In order for the superintendent of insurance to make a determination of license eligibility of an applicant, the superintendent of insurance shall request a criminal records check of the applicant from the superintendent of the bureau of criminal identification and investigation as described in section 109.572 of the Revised Code. The superintendent of insurance may request that the superintendent of the bureau of criminal identification and investigation request from the federal bureau of investigation a criminal records check of the applicant. 112
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(B) The superintendent of insurance shall require an applicant to submit fingerprint impressions on forms prescribed by the superintendent of the bureau of criminal identification and investigation described in section 109.572 of the Revised Code. The superintendent of insurance may authorize another entity to collect and transmit to the superintendent of the bureau of criminal identification and investigation the applicant's fingerprint impressions. The superintendent of insurance may require the applicant to pay a reasonable fee that the superintendent of insurance determines for collecting and transmitting the applicant's fingerprint impressions. The superintendent of insurance may require an applicant to pay the fee directly to the superintendent of insurance or to the entity that collected and transmitted the applicant's fingerprint impressions. 122
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(C) The superintendent of insurance may receive directly from the federal bureau of investigation criminal records check information of an applicant. 137
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(D) The superintendent of insurance shall treat and maintain an applicant's fingerprint impressions and any criminal records check information obtained under this section as confidential. The 140
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superintendent of insurance shall apply security measures 143
consistent with the criminal justice information services division 144
of the federal bureau of investigation standards for the 145
electronic storage of fingerprints and necessary identifying 146
information and limit the use of records solely to the purposes 147
authorized by this chapter. An applicant's fingerprint impressions 148
and any criminal records check information shall not be subject to 149
subpoena, other than one issued in a criminal action or 150
investigation; shall be confidential by law and privileged; and 151
shall not be subject to discovery or admissible in any private 152
civil action. 153

Sec. 3951.05. (A) Except as otherwise provided in section 154
3951.06 of the Revised Code, an individual applying for a public 155
adjuster license under this chapter shall pass a written 156
examination. The examination shall test the knowledge of the 157
individual concerning the duties and responsibilities of a public 158
adjuster and the insurance laws and rules of this state. 159
Examinations required by this section shall be developed and 160
conducted under rules prescribed by the superintendent of 161
insurance. Before admission to the examination, each individual 162
shall pay a nonrefundable examination fee as required by the 163
superintendent. 164

(B)(1) The superintendent may, in accordance with Chapter 165
119. of the Revised Code, adopt any rule necessary for the 166
implementation of this section. 167

(2) The superintendent may make any necessary arrangements, 168
including, but not limited to, contracting with an outside testing 169
service, for the administration of the examinations and collection 170
of fees required by this section. 171

(C) An individual who fails to appear for the examination as 172
scheduled or fails to pass the examination shall reapply for an 173

examination and remit all required fees and forms before being
rescheduled for another examination.

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Sec. 3951.06. (A) An individual who applies for a public
adjuster license in this state who was previously licensed as a
public adjuster in another state based on a public adjuster
examination shall not be required to complete an Ohio public
adjuster examination. This exemption is only available if the
person is currently licensed in that state or if the application
is received within twelve 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 is or was licensed
in good standing.

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(B) A person licensed as a public adjuster in another state
based on a public adjuster examination who moves to this state
shall make application within ninety days of establishing legal
residence to become a resident licensee pursuant to section
3951.04 of the Revised Code. No examination shall be required of
that person to obtain a public adjuster license.

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(C) An individual who applies for a public adjuster license
in this state who was previously licensed as a public adjuster in
this state shall not be required to complete any examination. This
exemption is only available if the application is received within
twelve months of the cancellation of the applicant's previous
license in this state and if, at the time of cancellation, the
applicant was in good standing in this state.

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Sec. 3951.07. (A) Before issuing a resident public adjuster
license to an applicant under this section, the superintendent of

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insurance shall find that the applicant satisfies all of the 204
following criteria: 205

(1) Is eligible to designate this state as the applicant's 206
home state or is a nonresident who is not eligible for a license 207
under section 3951.08 of the Revised Code; 208

(2) Has not committed any act that is a ground for denial, 209
suspension, or revocation of a license as set forth in section 210
3951.11 of the Revised Code; 211

(3) Is trustworthy, reliable, and of good reputation, 212
evidence of which may be determined by the superintendent; 213

(4) Is financially responsible to exercise the license and 214
has provided proof of financial responsibility as required in 215
section 3951.10 of the Revised Code; 216

(5) Has paid the fees required by the superintendent; 217

(6) Maintains an office in the home state of residence with 218
public access by reasonable appointment or regular business hours, 219
which shall include, but not be limited to, a designated office 220
within a home state of residence; 221

(7) Has satisfied any other applicable requirements of this 222
chapter. 223

(B) In addition to satisfying the requirements of division 224
(A) of this section, an individual or business entity shall 225
satisfy the following criteria: 226

(1) If the applicant is an individual, both of the following 227
criteria: 228

(a) Be at least eighteen years of age; 229

(b) Has successfully passed the public adjuster examination, 230
or has a valid exemption from the examination requirement under 231
section 3951.06 of the Revised Code. 232

<u>(2) If the applicant is a business entity, both of the</u>	233
<u>following criteria:</u>	234
<u>(a) Designate an individual public adjuster licensed under</u>	235
<u>this chapter to be responsible for the business entity's</u>	236
<u>compliance with the insurance laws, rules, and regulations of this</u>	237
<u>state;</u>	238
<u>(b) Designate only individual public adjusters licensed under</u>	239
<u>this chapter to exercise the business entity's license.</u>	240
<u>Sec. 3951.08. (A) Unless denied licensure pursuant to section</u>	241
<u>3951.11 of the Revised Code, a nonresident person shall receive a</u>	242
<u>nonresident public adjuster license if the superintendent of</u>	243
<u>insurance finds all of the following:</u>	244
<u>(1) The person is currently licensed as a resident public</u>	245
<u>adjuster and in good standing in the person's home state;</u>	246
<u>(2) The person has submitted the proper request for licensure</u>	247
<u>and paid the fees required by the superintendent;</u>	248
<u>(3) The person has submitted or transmitted to the</u>	249
<u>superintendent the appropriate completed application for</u>	250
<u>licensure;</u>	251
<u>(4) The person's home state awards nonresident public</u>	252
<u>adjuster licenses to residents of this state on the same basis;</u>	253
<u>(5) The person has not committed any act that is a ground for</u>	254
<u>denial, suspension, or revocation of a license as set forth in</u>	255
<u>section 3951.11 of the Revised Code;</u>	256
<u>(6) The person is trustworthy, reliable, and of good</u>	257
<u>reputation, evidence of which the superintendent may determine;</u>	258
<u>(7) The person is financially responsible to exercise the</u>	259
<u>license and has provided proof of financial responsibility as</u>	260
<u>required in section 3951.10 of the Revised Code;</u>	261

<u>(8) If the person is a business entity, that the business</u>	262
<u>entity completed both of the following:</u>	263
<u>(a) Designated an individual public adjuster licensed</u>	264
<u>pursuant to this chapter to be responsible for the business</u>	265
<u>entity's compliance with the insurance laws, rules, and</u>	266
<u>regulations of this state;</u>	267
<u>(b) Designated only individual public adjusters licensed</u>	268
<u>pursuant to this chapter to exercise the business entity's</u>	269
<u>license.</u>	270
<u>(9) The person has satisfied any other applicable</u>	271
<u>requirements of this chapter.</u>	272
<u>(B) The superintendent may verify the public adjuster's</u>	273
<u>licensing status through the producer database maintained by the</u>	274
<u>NAIC, its affiliates, or subsidiaries.</u>	275
<u>(C) As a condition to continuation of a public adjuster</u>	276
<u>license issued under this section, the licensee shall maintain a</u>	277
<u>resident public adjuster license in the licensee's home state. The</u>	278
<u>nonresident public adjuster license issued under this section</u>	279
<u>shall terminate and be surrendered immediately to the</u>	280
<u>superintendent if the home state public adjuster license</u>	281
<u>terminates for any reason, unless the public adjuster has been</u>	282
<u>issued a license as a resident public adjuster in the public</u>	283
<u>adjuster's new home state. Notification to the state or states</u>	284
<u>where the nonresident license is issued must be made as soon as</u>	285
<u>possible, yet not later than thirty days after the adjuster is</u>	286
<u>issued a license in the adjuster's new home state. In the</u>	287
<u>notification, the licensee shall include the licensee's current</u>	288
<u>and former address. A new home state resident license is required</u>	289
<u>for nonresident licenses to remain valid. The new home state</u>	290
<u>resident license shall have reciprocity with the licensing</u>	291
<u>nonresident state for the nonresident license to remain valid.</u>	292

Sec. 3951.09. (A) Unless denied licensure under this chapter, 293
the superintendent of insurance shall issue a public adjuster 294
license to an applicant who has met the requirements of this 295
chapter and submitted to the superintendent a licensing fee of one 296
hundred dollars. 297

(B) A public adjuster license is valid until the thirty-first 298
day of December of the year in which the license was issued or 299
renewed unless the license is revoked, terminated, or suspended 300
pursuant to section 3951.11 of the Revised Code. If a licensee 301
wishes to renew a license issued under this section, the licensee 302
shall submit to the superintendent before the license expires any 303
renewal forms the superintendent prescribes and a renewal fee of 304
fifty dollars. Notwithstanding Chapter 119. of the Revised Code, a 305
licensee's license shall expire automatically without any action 306
by the superintendent if the licensee fails to submit to the 307
superintendent any required renewal forms, pay the required 308
renewal fee, or complete the continuing education requirements 309
described in section 3951.15 of the Revised Code for the preceding 310
license period. 311

(C) Any public adjuster licensee that fails to apply for 312
renewal of a license before expiration of the current license 313
shall pay a lapsed license fee of two hundred dollars and be 314
subject to any other penalties provided by law. If a public 315
adjuster fails to renew a public adjuster license before it 316
expires, the public adjuster may request that the superintendent 317
reinstate the public adjuster's license. If the superintendent 318
receives a request for reinstatement and the required lapsed 319
license fee within one year of the date the license expired, and 320
the public adjuster completes the continuing education 321
requirements described in section 3951.15 of the Revised Code for 322
the calendar year preceding the year in which the public adjuster 323

seeks reinstatement, the superintendent shall reinstate the 324
license. The license shall be effective from the date the 325
superintendent approves the reinstatement. If the person applies 326
for reinstatement more than one year from the date the license 327
expired, the person shall reapply for a license as described in 328
this chapter. 329

(D) The licensee shall inform the superintendent by any means 330
acceptable to the superintendent of a change of address, change of 331
legal name, or change of information submitted on the application 332
within thirty days of the change. 333

(E) A licensed public adjuster shall be subject to sections 334
3901.19 to 3901.26 and Chapter 3999. of the Revised Code, and 335
administrative rules adopted thereunder. 336

(F) A licensed public adjuster that is unable to comply with 337
license renewal procedures due to military service, a long-term 338
medical disability, or some other extenuating circumstance, may 339
request a waiver of those procedures. The public adjuster also may 340
request a waiver of any examination requirement, fine, or other 341
sanction imposed for failure to comply with renewal procedures. 342

(G) The license shall contain the licensee's name, city and 343
state of business address, license number, the date of issuance, 344
the expiration date, and any other information the superintendent 345
deems necessary. 346

(H) In order to assist in the performance of the 347
superintendent's duties, the superintendent may contract with 348
nongovernmental entities, including the NAIC or any affiliates or 349
subsidiaries that the NAIC oversees, to perform any ministerial 350
functions, including, but not limited to, the collection of fees 351
and data related to licensing that the superintendent may deem 352
appropriate. 353

Sec. 3951.10. (A) Prior to issuance of a license as a public adjuster and for the duration of the license, the applicant shall secure evidence of financial responsibility in a format prescribed by the superintendent of insurance through a security bond or irrevocable letter of credit. 354
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(B) A surety bond described in division (A) of this section shall satisfy all of the following criteria: 359
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(1) Be executed and issued by an insurer authorized to issue surety bonds in this state; 361
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(2) Be in the minimum amount of twenty thousand dollars; 363

(3) Be in favor of this state and shall specifically authorize recovery by the superintendent on behalf of any person in this state 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; 364
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(4) Not be terminated unless at least thirty days' prior written notice is filed with the superintendent and given to the licensee. 369
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(C) An irrevocable letter of credit described in division (A) of this section shall satisfy all of the following criteria: 372
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(1) Be issued by a qualified financial institution; 374

(2) Be in the minimum amount of twenty thousand dollars; 375

(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; 376
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(4) Not be terminated unless at least thirty days' prior written notice is filed with the superintendent and given to the 381
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licensee. 383

(D) The issuer of the evidence of financial responsibility shall notify the superintendent upon termination of the bond or letter of credit, unless otherwise directed by the superintendent. 384
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(E) The superintendent may ask for the evidence of financial responsibility at any time the superintendent deems relevant. 387
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(F) The authority to act as a public adjuster shall automatically terminate if the evidence of financial responsibility terminates or becomes impaired. 389
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Sec. 3951.11. (A) As used in sections 3951.11 to 3951.12 of the Revised Code: 392
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(1) "Refusal to issue or renew" means the decision of the superintendent of insurance not to process either the initial application for a license as a public adjuster or the renewal of such a license. 394
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(2) "Revocation" means the permanent termination of all authority to hold any license as a public adjuster in this state. 398
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(3) "Surrender for cause" means the voluntary termination of all authority to hold any license as a public adjuster in this state, in lieu of a revocation or suspension order. 400
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(4) "Suspension" means the termination of all authority to hold any license as a public adjuster in this state, for either a specified period of time or an indefinite period of time, and under any terms or conditions determined by the superintendent of insurance. 403
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(B) The superintendent may suspend, revoke, or refuse to issue or renew any license of a public adjuster, assess a civil penalty, or impose any other sanction or sanctions authorized under this chapter, if the public adjuster does one or more of the 408
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- following: 412
- (1) Misrepresents to a claimant that the adjuster is an 413
adjuster representing an insurer in any capacity, including, but 414
not limited to, acting as an employee of the insurer or acting as 415
an independent adjuster unless so appointed by an insurer in 416
writing to act on the insurer's behalf for that specific claim or 417
purpose. A licensed public adjuster is prohibited from charging 418
that specific claimant a fee when appointed by the insurer and the 419
public adjuster accepts the appointment. 420
- (2) Provides incorrect, misleading, incomplete, or materially 421
untrue information in the license application; 422
- (3) Violates any insurance laws, or violates any regulation, 423
subpoena, or order of the superintendent or of the insurance 424
authority of another state; 425
- (4) Obtains or attempts to obtain a license through 426
misrepresentation or fraud; 427
- (5) Improperly withholds, misappropriates, or converts any 428
moneys or properties received in the course of doing insurance 429
business; 430
- (6) Intentionally misrepresents the terms of an actual or 431
proposed insurance contract or application for insurance; 432
- (7) Is convicted of a felony; 433
- (8) Admits or is found to have committed any insurance unfair 434
trade practice or insurance fraud; 435
- (9) Uses fraudulent, coercive, or dishonest practices or 436
demonstrates incompetence, untrustworthiness, or financial 437
irresponsibility in the conduct of business in this state or 438
elsewhere; 439
- (10) Has an insurance license, or its equivalent, denied, 440
suspended, or revoked in any other state, province, district, or 441

<u>territory;</u>	442
<u>(11) Forges another's name to an application for insurance or to any document related to an insurance transaction;</u>	443
<u>(12) Cheats, including, but not limited to, improperly using notes or any other reference material to complete an examination for an insurance license;</u>	444
<u>(13) Knowingly accepts insurance business from an individual who is not licensed but who is required to be licensed by the superintendent;</u>	445
<u>(14) If the public adjuster is a business entity, if the superintendent finds, after 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 and the violation was neither reported to the superintendent nor corrective action taken;</u>	446
<u>(15) Engages 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;</u>	447
<u>(16) Has any direct or indirect interest or receives compensation of any kind from any person engaged in the business described in division (B)(15) of this section;</u>	448
<u>(17) Solicits or attempts 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;</u>	449
<u>(18) Interferes 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 the state or any political subdivision of the state;</u>	450
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(19) Gives or offers 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; 472
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(20) Represents oneself as a fire investigator or a person connected with any fire department or law enforcement agency; 476
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(21) Pays 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 this chapter; 478
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(22) Unfairly and dishonestly inventories or estimates loss or damage; 481
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(23) Owns or acquires 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. 483
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(C) Before denying, revoking, suspending, or refusing to issue or renew any license or imposing any penalty under this section, the superintendent shall provide the licensee or applicant with notice and an opportunity for hearing as provided in Chapter 119. of the Revised Code, except that both of the following apply: 487
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(1)(a) Any notice of opportunity for hearing, the hearing officer's findings and recommendations, or the superintendent's order shall be served by certified mail, return receipt requested, at the last known address of the licensee or applicant. Service shall be evidenced by return receipt signed by any person. 493
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For purposes of this division, the "last known address" is the residential address of a licensee or applicant, or the principal place of business address of a business entity, that is contained in the licensing records of the department of insurance. 498
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(b) If the certified mail envelope is returned with an endorsement showing that service was refused, or that the envelope was unclaimed, the notice and all subsequent notices required by Chapter 119. of the Revised Code may be served by ordinary mail to the last known address of the licensee or applicant. A certificate of mailing shall evidence the mailing. Service is deemed complete as of the date of such certificate provided that the postal authorities do not return the ordinary mail envelope with an endorsement showing failure of delivery. The time period in which to request a hearing, as provided in Chapter 119. of the Revised Code, begins to run on the date of mailing. 502
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(c) If service by ordinary mail fails, the superintendent may cause a summary of the substantive provisions of the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known place of residence or business of the party is located. The notice is considered served on the date of the third publication. 513
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(d) Any notice required to be served under Chapter 119. of the Revised Code shall be served upon the party's attorney by ordinary mail if the attorney has entered an appearance in the matter. 519
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(e) The superintendent may, at any time, perfect service on a party by personal delivery of the notice by an employee of the department. 523
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(f) Notices regarding the scheduling of hearings and all other matters not described in division (C)(1)(a) of this section shall be sent by ordinary mail to the party and to the party's attorney. 526
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(2) Any subpoena for the appearance of a witness or the production of documents or other evidence at a hearing, or for the purpose of taking testimony for use at a hearing, shall be served 530
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by certified mail, return receipt requested, by an attorney or by 533
an employee of the department designated by the superintendent. 534
Such subpoenas shall be enforced in the manner provided in section 535
119.09 of the Revised Code. Nothing in this section shall be 536
construed as limiting the superintendent's other statutory powers 537
to issue subpoenas. 538

(D) If the superintendent determines that a violation 539
described in this section has occurred, the superintendent may 540
take one or more of the following actions: 541

(1) Assess a civil penalty in an amount not exceeding 542
twenty-five thousand dollars per violation; 543

(2) Assess administrative costs to cover the expenses 544
incurred by the superintendent in the administrative action, 545
including, but not limited to, costs incurred in the investigation 546
and hearing processes. Any costs collected shall be paid into the 547
state treasury to the credit of the department of insurance 548
operating fund created in section 3901.021 of the Revised Code. 549

(3) Suspend the person's license for either a specified 550
period of time or an indefinite period of time and under such 551
terms and conditions as the superintendent may determine; 552

(4) Permanently revoke the person's license; 553

(5) Refuse to issue or renew a license; 554

(6) Prohibit the person from being employed in any capacity 555
in the business of insurance and from having any financial 556
interest in any public adjuster agency, insurance agency, company, 557
surety bail bond business, or third-party administrator in this 558
state. The superintendent may, in the superintendent's discretion, 559
determine the nature, conditions, and duration of such 560
restrictions. 561

(7) Order corrective actions in lieu of or in addition to the 562

other penalties listed in division (D) of this section. Such an 563
order may provide for the suspension of civil penalties, license 564
revocation, license suspension, or refusal to issue or renew a 565
license if the licensee complies with the terms and conditions of 566
the corrective action order. 567

(8) Accept a surrender for cause offered by the licensee, 568
which shall be for at least five years and shall prohibit the 569
licensee from seeking any license authorized under this chapter 570
during that time period. A surrender for cause shall be in lieu of 571
revocation or suspension and may include a corrective action order 572
as provided in division (D)(7) of this section. 573

(E) The superintendent may consider the following factors in 574
denying a license, imposing suspensions, revocations, fines, or 575
other penalties, and issuing orders under this section: 576

(1) Whether the person acted in good faith; 577

(2) Whether the person made restitution for any pecuniary 578
losses suffered by other persons as a result of the person's 579
actions; 580

(3) The actual harm or potential for harm to others; 581

(4) The degree of trust placed in the person by, and the 582
vulnerability of, persons who were or could have been adversely 583
affected by the person's actions; 584

(5) Whether the person was the subject of any previous 585
administrative actions by the superintendent; 586

(6) The number of individuals adversely affected by the 587
person's acts or omissions; 588

(7) Whether the person voluntarily reported the violation, 589
and the extent of the person's cooperation and acceptance of 590
responsibility; 591

(8) Whether the person obstructed or impeded, or attempted to 592

<u>obstruct or impede, the superintendent's investigation;</u>	593
<u>(9) The person's efforts to conceal the misconduct;</u>	594
<u>(10) Remedial efforts to prevent future violations;</u>	595
<u>(11) If the person was convicted of a criminal offense, the</u>	596
<u>nature of the offense, whether the conviction was based on acts or</u>	597
<u>omissions taken under any professional license, whether the</u>	598
<u>offense involved the breach of a fiduciary duty, the amount of</u>	599
<u>time that has passed, and the person's activities subsequent to</u>	600
<u>the conviction;</u>	601
<u>(12) Such other factors as the superintendent determines to</u>	602
<u>be appropriate under the circumstances.</u>	603
<u>(F) If a violation described in this section has caused, is</u>	604
<u>causing, or is about to cause substantial and material harm, the</u>	605
<u>superintendent may issue an order requiring that person to cease</u>	606
<u>and desist from engaging in the violation. Notice of the order</u>	607
<u>shall be mailed by certified mail, return receipt requested, or</u>	608
<u>served in any other manner provided for in this section,</u>	609
<u>immediately after its issuance to the person subject to the order</u>	610
<u>and to all persons known to be involved in the violation. The</u>	611
<u>superintendent may thereafter publicize or otherwise make known to</u>	612
<u>all interested parties that the order has been issued.</u>	613
<u>The notice shall specify the particular act, omission,</u>	614
<u>practice, or transaction that is subject to the cease-and-desist</u>	615
<u>order and shall set a date, not more than fifteen days after the</u>	616
<u>date of the order, for a hearing on the continuation or revocation</u>	617
<u>of the order. The person shall comply with the order immediately</u>	618
<u>upon receipt of notice of the order.</u>	619
<u>The superintendent may, upon the application of a party and</u>	620
<u>for good cause shown, continue the hearing. Chapter 119. of the</u>	621
<u>Revised Code applies to such hearings to the extent that the</u>	622

chapter does not conflict with the procedures set forth in this 623
section. The superintendent shall, within fifteen days after 624
objections are submitted to the hearing officer's report and 625
recommendation, issue a final order either confirming or revoking 626
the cease-and-desist order. The final order may be appealed as 627
provided under section 119.12 of the Revised Code. 628

The remedy under this division is cumulative and concurrent 629
with the other remedies available under this section. 630

(G) If the superintendent has reasonable cause to believe 631
that an order issued under this section has been violated in whole 632
or in part, the superintendent may request the attorney general to 633
commence and prosecute any appropriate action or proceeding in the 634
name of the state against such person. 635

The court may, in an action brought pursuant to this 636
division, impose any of the following penalties: 637

(1) For each violation, a civil penalty of not more than 638
twenty-five thousand dollars; 639

(2) Injunctive relief; 640

(3) Restitution; 641

(4) Any other appropriate relief. 642

(H) Nothing in this section shall be construed to create or 643
imply a private cause of action against a public adjuster or 644
insurer. 645

Sec. 3951.12. (A) Upon written application of a person whose 646
license was denied, suspended, revoked, or surrendered for cause 647
under section 3951.11 of the Revised Code, the superintendent of 648
insurance shall hold a hearing to determine whether the 649
administrative action imposing the denial, suspension, revocation, 650
or surrender should be modified, provided that all of the 651

following conditions are met: 652

(1) At least five years have elapsed since the date of the 653
administrative action sought to be modified. 654

(2) At least two years have elapsed since any previous 655
request for a modification was made under this section. 656

(3) The burden of proof is on the person requesting the 657
modification. 658

(B) The modification of an order issued or consent agreement 659
entered into under section 3951.11 of the Revised Code is at the 660
discretion of the superintendent. The superintendent may modify 661
such an order or agreement if the superintendent finds all of the 662
following: 663

(1) At least five years have elapsed since the date of the 664
administrative action. 665

(2) The person is of good business repute and is suitable to 666
be a public adjuster. 667

(3) The person has made restitution for all pecuniary losses 668
suffered by any person as a result of the conduct that gave rise 669
to the administrative action. 670

(4) The person has not been convicted of any felony unless 671
the conviction was the subject of a previous administrative action 672
by the superintendent. 673

(5) The circumstances surrounding the previous violation are 674
such that it is unlikely the person would commit such offenses in 675
the future. 676

(6) The person's character has been rehabilitated. 677

(C) The issuance of any license pursuant to a modification 678
under this section shall be conditioned upon the successful 679
completion of all examination requirements. 680

Sec. 3951.13. On receipt of a notice pursuant to section 3123.43 of the Revised Code, the superintendent of insurance shall comply with sections 3123.41 to 3123.50 of the Revised Code and any applicable rules adopted under section 3123.63 of the Revised Code with respect to a license issued pursuant to this chapter. 681
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Sec. 3951.14. The public adjuster shall report to the superintendent of insurance any administrative action taken against the public adjuster in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include, but not be limited to, a copy of the order, consent to order, or other relevant legal documents. 686
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Within thirty days of the initial pretrial hearing date, the public adjuster shall report to the superintendent any criminal prosecution of the public adjuster taken in any jurisdiction. The report shall include, but not be limited to, a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents. 693
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Sec. 3951.15. (A) Each individual who is issued a license as a public adjuster and who is not exempt under division (B) of this section, shall satisfactorily complete at least twelve hours of continuing education, including, but not limited to, one and one-half hours of ethics, each license renewal period. 699
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(B) This section shall not apply to either of the following licensees: 704
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(1) Licensees not licensed for one full year prior to the end of the applicable continuing education; 706
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(2) Licensees holding nonresident public adjuster licenses who have met the continuing education requirements of their home 708
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state and whose home state gives credit to residents of this state
on the same basis.

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(C) Notwithstanding Chapter 119. of the Revised Code, if a
licensee fails to complete the continuing education requirements
described in this section, the licensee's license shall expire
automatically without any action by the superintendent of
insurance.

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(D) The superintendent shall adopt, in accordance with
Chapter 119. of the Revised Code, any rule necessary to carry out
the superintendent's duties under this section.

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Sec. 3951.16. (A) A public adjuster shall not pay a
commission, service fee, or other valuable consideration to a
person for investigating or settling claims in this state if that
person is required to be licensed under this chapter and is not so
licensed.

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(B) A person shall not accept a commission, service fee, or
other valuable consideration for investigating or settling claims
in this state if that person is required to be licensed under this
chapter and is not so licensed.

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(C) A public adjuster may pay or assign commission, service
fees, or other valuable consideration to persons who do not
investigate or settle claims in this state, unless the payment
would violate sections 3905.18 and 3905.181 or Chapter 3933. of
the Revised Code.

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(D) A public adjuster shall not charge, agree to charge, or
accept as compensation or reimbursement for a claim any payment,
commission, fee, or other thing of value that is equal to more
than twenty per cent of any insurance settlement or proceeds
obtained from that claim.

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(E) In the event of a catastrophic disaster, both of the

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following apply:

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(1) No public adjuster shall charge, agree to, or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to more than ten per cent of any insurance settlement or proceeds.

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(2) No public adjuster shall require, demand, or accept any fee, retainer, compensation, deposit, or other thing of value, prior to settlement of a claim unless the public adjuster is hired on an hourly basis with respect to a commercial claim.

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Sec. 3951.17. 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.

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Sec. 3951.18. The superintendent of insurance may adopt rules to implement this chapter including, but not limited to, rules on all of the following subjects:

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(A) Requirements related to the contracts between public adjusters and insureds;

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(B) Written disclosures to be made by public adjusters to insureds;

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(C) Record retention requirements;

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(D) Standards of conduct and ethics for public adjusters.

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Sec. 4749.01. As used in this chapter:

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(A) "Private investigator" means any person who engages in the business of private investigation.

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(B) "Business of private investigation" means, except when performed by one excluded under division (H) of this section, the conducting, for hire, in person or through a partner or employees, of any investigation relevant to any crime or wrong done or threatened, or to obtain information on the identity, habits, conduct, movements, whereabouts, affiliations, transactions, reputation, credibility, or character of any person, or to locate and recover lost or stolen property, or to determine the cause of or responsibility for any libel or slander, or any fire, accident, or damage to property, or to secure evidence for use in any legislative, administrative, or judicial investigation or proceeding.

(C) "Security guard provider" means any person who engages in the business of security services.

(D) "Business of security services" means either of the following:

(1) Furnishing, for hire, watchpersons, guards, private patrol officers, or other persons whose primary duties are to protect persons or property;

(2) Furnishing, for hire, guard dogs, or armored motor vehicle security services, in connection with the protection of persons or property.

(E) "Class A license" means a license issued under section 4749.03 of the Revised Code that qualifies the person issued the license to engage in the business of private investigation and the business of security services.

(F) "Class B license" means a license issued under section 4749.03 of the Revised Code that qualifies the person issued the license to engage only in the business of private investigation.

(G) "Class C license" means a license issued under section

4749.03 of the Revised Code that qualifies the person issued the license to engage only in the business of security services. 797
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(H) "Private investigator," "business of private investigation," "security guard provider," and "business of security services" do not include: 799
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(1) Public officers and employees whose official duties require them to engage in investigatory activities; 802
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(2) Attorneys at law or any expert hired by an attorney at law for consultation or litigation purposes; 804
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(3) A consumer reporting agency, as defined in the "Fair Credit Reporting Act," 84 Stat. 1128, 15 U.S.C.A. 1681a, as amended, provided that the consumer reporting agency is in compliance with the requirements of that act and that the agency's activities are confined to any of the following: 806
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(a) The issuance of consumer credit reports; 811

(b) The conducting of limited background investigations that pertain only to a client's prospective tenant and that are engaged in with the prior written consent of the prospective tenant; 812
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(c) The business of pre-employment background investigation. 815
As used in division (H)(3)(c) of this section, "business of pre-employment background investigation" means, and is limited to, 816
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furnishing for hire, in person or through a partner or employees, the conducting of limited background investigations, in-person interviews, telephone interviews, or written inquiries that pertain only to a client's prospective employee and the employee's employment and that are engaged in with the prior written consent of the prospective employee.

(4) ~~Certified public insurance~~ Public adjusters that hold a certificate of authority issued pursuant to sections 3951.01 to ~~3951.09~~ 3951.18 of the Revised Code, while the adjuster is 824
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investigating the cause of or responsibility for a fire, accident, 827
or other damage to property with respect to a claim or claims for 828
loss or damage under a policy of insurance covering real or 829
personal property; 830

(5) Personnel placement services and persons who act as 831
employees of such entities engaged in investigating matters 832
related to personnel placement activities; 833

(6) An employee in the regular course of the employee's 834
employment, engaged in investigating matters pertinent to the 835
business of the employee's employer or protecting property in the 836
possession of the employee's employer, provided the employer is 837
deducting all applicable state and federal employment taxes on 838
behalf of the employee and neither the employer nor the employee 839
is employed by, associated with, or acting for or on behalf of any 840
private investigator or security guard provider; 841

(7) Any better business bureau or similar organization or any 842
of its employees while engaged in the maintenance of the quality 843
of business activities relating to consumer sales and services; 844

(8) An accountant who is registered or certified under 845
Chapter 4701. of the Revised Code or any of the accountant's 846
employees while engaged in activities for which the accountant is 847
certified or registered; 848

(9) Any person who, for hire or otherwise, conducts 849
genealogical research in this state. 850

As used in division (H)(9) of this section, "genealogical 851
research" means the determination of the origins and descent of 852
families, including the identification of individuals, their 853
family relationships, and the biographical details of their lives. 854
"Genealogical research" does not include furnishing for hire 855
services for locating missing persons or natural or birth parents 856
or children. 857

(10) Any person residing in this state who conducts research 858
for the purpose of locating the last known owner of unclaimed 859
funds, provided that the person is in compliance with Chapter 169. 860
of the Revised Code and rules adopted thereunder. The exemption 861
set forth in division (H)(10) of this section applies only to the 862
extent that the person is conducting research for the purpose of 863
locating the last known owner of unclaimed funds. 864

As used in division (H)(10) of this section, "owner" and 865
"unclaimed funds" have the same meanings as in section 169.01 of 866
the Revised Code. 867

(11) A professional engineer who is registered under Chapter 868
4733. of the Revised Code or any of his employees. 869

As used in division (H)(11) of this section and 870
notwithstanding division (I) of this section, "employee" has the 871
same meaning as in section 4101.01 of the Revised Code. 872

(12) Any person residing in this state who, for hire or 873
otherwise, conducts research for the purpose of locating persons 874
to whom the state of Ohio owes money in the form of warrants, as 875
defined in division (S) of section 131.01 of the Revised Code, 876
that the state voided but subsequently reissues. 877

(13) An independent insurance adjuster who, as an individual, 878
an independent contractor, an employee of an independent 879
contractor, adjustment bureau association, corporation, insurer, 880
partnership, local recording agent, managing general agent, or 881
self-insurer, engages in the business of independent insurance 882
adjustment, or any person who supervises the handling of claims 883
except while acting as an employee of an insurer licensed in this 884
state while handling claims pertaining to specific policies 885
written by that insurer. 886

As used in division (H)(13) of this section, "independent 887
insurance adjustment" means conducting investigations to determine 888

the cause of or circumstances concerning a fire, accident, bodily 889
injury, or damage to real or personal property; determining the 890
extent of damage of that fire, accident, injury, or property 891
damage; securing evidence for use in a legislative, 892
administrative, or judicial investigation or proceeding, adjusting 893
losses; and adjusting or settling claims, including the 894
investigation, adjustment, denial, establishment of damages, 895
negotiation, settlement, or payment of claims in connection with 896
insurance contractors, self-insured programs, or other similar 897
insurance programs. "Independent adjuster" does not include either 898
of the following: 899

(a) An attorney who adjusts insurance losses incidental to 900
the practice of law and who does not advertise or represent that 901
the attorney is an independent insurance adjuster; 902

(b) A licensed agent or general agent of an insurer licensed 903
in this state who processes undisputed or uncontested losses for 904
insurers under policies issued by that agent or general agent. 905

(14) Except for a commissioned peace officer who engages in 906
the business of private investigation or compensates others who 907
engage in the business of private investigation or the business of 908
security services or both, any commissioned peace officer as 909
defined in division (B) of section 2935.01 of the Revised Code. 910

(I) "Employee" means every person who may be required or 911
directed by any employer, in consideration of direct or indirect 912
gain or profit, to engage in any employment, or to go, or work, or 913
be at any time in any place of employment, provided that the 914
employer of the employee deducts all applicable state and federal 915
employment taxes on behalf of the employee. 916

Section 2. That existing section 4749.01 and sections 917
3951.01, 3951.02, 3951.03, 3951.04, 3951.041, 3951.05, 3951.06, 918
3951.07, 3951.08, 3951.09, 3951.10, and 3951.99 of the Revised 919

Code are hereby repealed.

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