

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

HOUSE BILL NO. 1219
(Representative Keiser)

AN ACT to create and enact chapter 26.1-26.8 and chapter 26.1-39.2 of the North Dakota Century Code, relating to public adjuster licensing and to contracts between insured homeowners and residential contractors; to amend and reenact subdivision mm of subsection 2 of section 12-60-24 of the North Dakota Century Code, relating to criminal history record checks; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision mm of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

mm. The insurance department for criminal history record checks authorized under ~~chapter~~ chapters 26.1-26 and 26.1-26.8.

SECTION 2. Chapter 26.1-26.8 of the North Dakota Century Code is created and enacted as follows:

26.1-26.8-01. Scope.

This chapter governs the qualifications and procedures for licensing public adjusters in this state and specifies the duties of and restrictions on public adjusters, including limitation of licensure to assisting only insureds with first-party claims.

26.1-26.8-02. Definitions.

As used in this chapter:

1. "Business entity" has the same meaning as provided in section 26.1-26-02.
2. "Department" means the insurance department.
3. "Home state" means the state in which the principal place of residence or principal place of business of the public adjuster is located.
4. "Insured" means a person insured under the insurance policy against which the claim is made.
5. "Public adjuster" means a person that, for compensation, does the following:
 - a. Acts for or aids an insured in negotiating for or effecting the settlement of a first-party claim for loss or damage to real or personal property of the insured;
 - b. Advertises for employment as a public adjuster of first-party claims or otherwise solicits business or represents to the public the person is a public adjuster of first-party claims for loss or damage to real or personal property of an insured; or
 - c. Solicits the business of investigating or adjusting losses or of advising an insured about first-party claims for loss or damage to real or personal property of the insured.
6. "Uniform business entity application" means the uniform business entity application prescribed by the commissioner which conforms substantially to the uniform business entity application for resident and nonresident business entities adopted by the national association of insurance commissioners.

7. "Uniform individual application" means the uniform individual application prescribed by the commissioner which conforms substantially to the uniform application for individual adjuster licensing adopted by the national association of insurance commissioners.

26.1-26.8-03. License required - Penalty.

1. A person may not operate as or represent that the person is a public adjuster in this state unless the person is licensed as a public adjuster in accordance with this chapter.
2. A public adjuster may not misrepresent to an insured the public adjuster is an adjuster representing an insurer in any capacity, including acting as an employee of the insurer or acting as an independent adjuster.
3. A public adjuster may not solicit or enter an agreement for the repair or replacement of damaged property on which the public adjuster has engaged to adjust or settle claims for losses or damages of the insured.
4. Except as provided in subsection 1, licensure as a public adjuster is not required for:
 - a. An attorney admitted to practice in this state, in the course of acting in the attorney's professional capacity as an attorney;
 - b. A person that negotiates or settles claims arising under a life or health insurance policy or an annuity contract;
 - c. An individual employed for the limited purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster, including a photographer, estimator, private investigator, engineer, or handwriting expert;
 - d. A licensed health care provider, or an employee of a licensed health care provider, who prepares or files a health claim form on behalf of a patient; or
 - e. A person that settles subrogation claims between insurers.
5. A person willfully violating subsection 1 or 2 is guilty of a class C felony.

26.1-26.8-04. Application for resident license.

An individual applying for a resident public adjuster license shall submit to the commissioner a completed uniform individual application and declare under penalty of denial, suspension, or revocation 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. The commissioner shall approve the application if the commissioner determines the individual:

1. Is at least eighteen years of age;
2. Has a principal place of residence or principal place of business in this state;
3. Has not committed an act that is a ground for denial, suspension, or revocation set forth in section 26.1-26.8-10;
4. Has paid the resident licensing fee, not to exceed one hundred dollars, prescribed by the commissioner;
5. Except as otherwise provided in this chapter, has passed the examinations required by section 26.1-26.8-07;
6. Is trustworthy, reliable, and of good reputation;

7. Is financially responsible to exercise the license and has provided proof of financial responsibility, as required in section 26.1-26.8-11;
8. Maintains an office in this state, with public access to the office by reasonable appointment or regular business hours; and
9. Has completed a criminal history record check as provided in section 12-60-24.
 - a. All costs associated with the criminal history record check under this section are the responsibility of the applicant.
 - b. This subsection does not apply to license continuation under section 26.1-26.8-09 or to an individual who applies for a public adjuster license within twelve months following the cancellation or expiration of a valid resident public adjuster license issued by the department, unless the license was suspended or revoked.
 - c. The commissioner may make arrangements, including contracting with an outside service, for the collection and transmission of fingerprints for conducting criminal history record checks.

26.1-26.8-05. Nonresident license reciprocity.

1. An individual applying for a nonresident public adjuster license shall apply to the commissioner in the manner prescribed by the commissioner and declare under penalty of denial, suspension, or revocation 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. The commissioner shall approve the application if the commissioner determines the applicant:
 - a. Is licensed as a resident public adjuster and in good standing in the individual's home state and the home state awards nonresident public adjuster licenses to residents of this state on the same basis as provided for in this chapter; and
 - b. Has paid the nonresident licensing fee, not to exceed one hundred dollars, prescribed by the commissioner.
2. The commissioner may verify the licensing status of a nonresident public adjuster through the producer database maintained by the national association of insurance commissioners, or the association's affiliates or subsidiaries.
3. As a condition to continuation of a nonresident public adjuster license, a nonresident public adjuster shall maintain a resident public adjuster license in good standing in the individual's home state.
4. A licensed nonresident public adjuster shall surrender immediately to the commissioner the individual's nonresident public adjuster license and the commissioner shall terminate the individual's nonresident public adjuster license if the home state public adjuster license terminates for any reason, unless the individual has been issued a license as a resident public adjuster in a new home state and the new home state has reciprocity with this state. A licensed nonresident public adjuster shall notify the commissioner of a change to a new home state as soon as possible, but no later than thirty days after receiving a license as a resident public adjuster from the new home state. The licensed nonresident public adjuster shall include both the new and the old addresses in the notice to the commissioner.

26.1-26.8-06. License required for business entity.

1. A business entity acting as a public adjuster in this state must be licensed as a public adjuster. A business entity applying for a public adjuster license shall submit to the commissioner a completed uniform business entity application and declare under penalty of denial, suspension, or revocation of the license that the statements made in the application are true.

correct, and complete to the best of the knowledge and belief of the entity. The commissioner shall approve the application if the commissioner determines the applicant:

- a. Has paid the business entity licensing fee, not to exceed one hundred fifty dollars, prescribed by the commissioner; and
 - b. Has designated a resident public adjuster or a nonresident public adjuster licensed pursuant to this chapter to be responsible for compliance with the insurance laws, rules, and regulations of this state for the business entity.
2. The commissioner may require additional documents be submitted that are reasonably necessary to verify the information contained in an application pursuant to this section.

26.1-26.8-07. Examination.

1. An individual applying for a resident public adjuster license shall pass a written examination, unless exempt pursuant to section 26.1-26.8-08. The examination must test the individual's knowledge concerning the duties and responsibilities of a public adjuster and the insurance laws and regulations of this state and be conducted as prescribed by the commissioner.
2. The commissioner may make arrangements, including contracting with an outside testing service, for administering the written examination required pursuant to subsection 1 and collecting the nonrefundable fee as prescribed by the commissioner as set forth in section 26.1-01-07.
3. An individual applying for examination shall remit a nonrefundable fee as prescribed by the commissioner as set forth in section 26.1-01-07.
4. An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination if the individual remits all required fees and forms before being rescheduled for another examination.

26.1-26.8-08. Exemptions from examination.

1. An individual who applies for a resident public adjuster license in this state who was previously licensed as a public adjuster in another state is not required to complete an examination. This exemption is available only if:
 - a. The applicant is currently licensed in another state; or
 - b. The commissioner receives the application within ninety days of the cancellation of the applicant's previous license and the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in the state or the state's public adjuster database records, maintained by the national association of insurance commissioners or the association's affiliates or subsidiaries, indicate the applicant is or was licensed in good standing.
2. To become a resident licensee pursuant to section 26.1-26.8-04, an individual licensed as a public adjuster in another state who moves to this state shall apply within ninety days of establishing legal residence in this state. An examination may not be required of that individual to obtain a resident public adjuster license unless the commissioner determines otherwise by rule.
3. If an individual who applies for a resident public adjuster license previously was licensed as either a resident public adjuster or a nonresident public adjuster in this state, the commissioner may not require the individual to complete an examination if:
 - a. The application is received within twelve months of the termination of the previous license in this state; and

- b. At the time of the termination, the applicant was in good standing in this state.

26.1-26.8-09. License - Renewal - Reinstatement.

1. The commissioner shall issue a resident public adjuster license or nonresident public adjuster license to an individual who meets the necessary requirements of this chapter.
 - a. A resident public adjuster license and a nonresident public adjuster license expire on the last day of the month of the licensed public adjuster's birthday following the two-year anniversary of issuance of a license by the commissioner.
 - b. To renew a license, a licensed resident public adjuster and a licensed nonresident public adjuster shall file a biennial license continuation in the form and manner prescribed by the commissioner and pay a fee of twenty-five dollars. The commissioner shall give a licensee at least sixty days' notice of the biennial license continuation filing deadline. A resident public adjuster or a nonresident public adjuster who allows the license to lapse may, within the twelve-month period immediately following the expiration date, reinstate the same license without the necessity of passing a written examination, upon payment of a reinstatement fee, not to exceed one hundred twenty-five dollars, prescribed by the commissioner in addition to the renewal fee.
 - c. The commissioner may grant an individual licensee who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance, including a long-term medical disability, a waiver of an examination requirement or a fine, fee, or sanction imposed for failure to comply with renewal procedures.
2. The commissioner shall issue a business entity public adjuster license to a business entity that meets the necessary requirements of this chapter.
 - a. A business entity public adjuster license expires on the two-year anniversary of issuance of a license by the commissioner.
 - b. To renew a license, a licensed business entity public adjuster shall file a biennial license continuation in the form and manner prescribed by the commissioner.
 - c. A business entity public adjuster license may be renewed within the ninety-day period immediately preceding the expiration date upon payment of the renewal fee, not to exceed one hundred fifty dollars, prescribed by the commissioner. A business entity public adjuster that allows the license to lapse may, within the thirty-day period immediately following the expiration date, renew the same license upon payment of a late renewal fee, not to exceed one hundred twenty-five dollars, prescribed by the commissioner in addition to the renewal fee.
 - d. A business entity public adjuster license renewed within the thirty-day period immediately following the expiration date pursuant to this section is deemed to have been renewed before the expiration date.
3. A license issued pursuant to this chapter must contain the licensee's name, address, and license number; the date of issuance; the lines of authority; the expiration date; and any information the commissioner deems necessary.
4. Within thirty days after the change, a licensee shall inform the commissioner, by any means acceptable to the commissioner, of a change of legal name, address, or other information submitted on the application.
 - a. A licensee who fails to provide this notification of change is subject to a fine by the commissioner of not more than five hundred dollars per violation, suspension of the license until the change is reported to the commissioner, or both.

- b. A licensee doing business under a name other than the licensee's legal name shall notify the commissioner before using the assumed name.
- 5. A licensee is subject to the provisions of chapter 26.1-04.
- 6. A licensee shall report to the commissioner any administrative action taken against the licensee in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. The report must include a copy of the order, consent to order, or other relevant legal documents.
- 7. Within thirty days after a criminal conviction, a licensee shall report to the commissioner any criminal conviction of the licensee taken in any jurisdiction. The report must include a copy of the initial complaint, the order issued by the court, and any other relevant legal documents.
- 8. The commissioner may contract with nongovernmental entities, including the national association of insurance commissioners, or affiliates or subsidiaries the national association oversees, to perform ministerial functions, including the collection of fees, related to the administration of this chapter.
- 9. The commissioner may adopt rules establishing license renewal procedures.

26.1-26.8-10. License denial, nonrenewal, or revocation - Penalty.

- 1. The commissioner may suspend, revoke, or refuse to issue or renew a resident public adjuster license, nonresident public adjuster license, or business entity public adjuster license or may levy an administrative fine in accordance with subsection 4, or a combination of those actions, for the following causes:
 - a. Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
 - b. Violating any provision of this title or violating a rule, regulation, subpoena, or order of the commissioner or another state's insurance commissioner;
 - c. Obtaining or attempting to obtain a license through misrepresentation or fraud;
 - d. Improperly withholding, misappropriating, or converting money or property received in the course of doing business;
 - e. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
 - f. Having been convicted of a felony or a class A or B misdemeanor;
 - g. Having admitted or been found to have committed an insurance unfair trade practice, an unfair claims settlement practice, or fraud;
 - h. Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere or failing to comply with section 26.1-26.8-15;
 - i. Having an insurance or public adjuster license, or its equivalent, denied, suspended, placed on probation, or revoked in this state or in another state, province, district, or territory;
 - j. Forging another person's name to an application for insurance or to a document related to an insurance transaction;

- k. Improperly using notes or other reference materials to complete an examination for an insurance license;
 - l. Knowingly accepting insurance business from a person that is not licensed;
 - m. Failing to comply with an administrative or court order imposing a child support obligation;
 - n. Failing to pay state income tax or comply with an administrative or court order directing payment of state income tax; or
 - o. Failing to maintain in good standing a resident license in the public adjuster's home state.
2. If the commissioner does not renew or denies an application for a public adjuster license, the commissioner shall notify the applicant or licensee and advise, in writing, the reason for the denial or nonrenewal of the license. Within thirty days of nonrenewal or denial, the applicant or licensee may make written demand upon the commissioner for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing must be held pursuant to chapter 28-32.
 3. A business entity public adjuster license may be suspended, revoked, or denied if the commissioner finds, after notice and hearing, that a violation committed by an individual licensee providing services through the business entity 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 neither was reported to the commissioner nor was corrective action taken in relation to the violation.
 4. In addition to or in lieu of an applicable denial, suspension, or revocation of a license, a person violating this chapter may, after notice and hearing, be subject to an administrative fine of not more than ten thousand dollars per violation. A fine may be enforced in the same manner as civil judgments. A person charged with a violation of this chapter may waive the right to a hearing and consent to the discipline the commissioner determines is appropriate. Chapter 28-32 governs all hearings held pursuant to this subsection.
 5. The commissioner may enforce this chapter and impose a penalty or remedy authorized by this chapter against a person under investigation for or charged with a violation of this chapter even if the person's license has been surrendered or lapsed by operation of law. A disciplinary proceeding may not be instituted against a person after three years from the termination of the person's license.

26.1-26.8-11. Proof of bond or insurance.

1. At the time of issuance of a resident public adjuster license or a nonresident public adjuster license and for the duration of the license, an applicant shall maintain a surety bond or proof of insurance satisfactory to the commissioner for the use and benefit of the commissioner for insureds that have remitted fees, retainers, compensation, deposits, or other things of value to the public adjuster in the course of the public adjuster's business. The bond:
 - a. Must be a minimum of twenty thousand dollars; and
 - b. May not be terminated by the surety company or public adjuster unless written notice has been filed with the commissioner and submitted to the public adjuster at least sixty days before the termination.
2. The commissioner may request the evidence of financial responsibility at any time the commissioner deems relevant.
3. A public adjuster immediately shall notify the commissioner if evidence of financial responsibility terminates or becomes impaired. The authority to act as a public adjuster

automatically terminates if the evidence of financial responsibility terminates or becomes impaired.

26.1-26.8-12. Continuing education.

1. Except as otherwise provided in this section, an individual who holds a resident public adjuster license or a nonresident public adjuster license shall satisfactorily complete a minimum of twenty-four credits of continuing education, including three credits of ethics, reported on a biennial basis in conjunction with the license renewal cycle. Credits for continuing education courses attended in any one year over the minimum number of hours of education required, not to exceed twelve hours, may be credited to the year next preceding the year in which the credits were earned or to the year next following the year in which the credits were earned. Report of continuing education must be made at the end of a two-year period. The commissioner may provide a one-time extension of the two-year reporting requirement, not to exceed thirty-six months, if additional time is necessary to implement the transition to reporting continuing education by birth month.
2. The requirements of subsection 1 do not apply to a nonresident public adjuster who has met the continuing education requirements of the adjuster's home state and whose home state gives credit to residents of this state on the same basis.
3. The commissioner shall provide by rule for reporting by birth month of compliance with the continuing education requirements of this section.
4. The commissioner shall adopt by rule criteria for the accreditation of courses for continuing education. Applications for accreditation of a continuing education course offered in this state must be submitted to the commissioner within the time provided by rule and on forms established by rule and with a fee of fifty dollars. The commissioner shall make a final determination as to accreditation and assignment of credit-hours for continuing education courses.

26.1-26.8-13. Contract between public adjuster and insured.

1. A contract for a public adjuster's services must be in writing and contain the following terms:
 - a. Legible full name of the public adjuster signing the contract, as specified in commissioner records;
 - b. Home state, business address, and telephone number;
 - c. Public adjuster license number;
 - d. Title of "Public Adjuster Contract";
 - e. Insured's full name and street address, insurer name, and insurance policy number, if known or upon notification;
 - f. Description of the loss and the location of the loss, if applicable;
 - g. Description of services to be provided to the insured;
 - h. Signatures of the public adjuster and the insured;
 - i. The date the contract was signed by the public adjuster and the date the contract was signed by the insured;
 - j. Attestation language stating the public adjuster is fully bonded pursuant to state law; and

- k. The specific amount of compensation, including the full salary, fee, commission, or other consideration the public adjuster is to receive for services.
2. The contract may specify the public adjuster must be named as a copayee on an insurer's payment of a claim.
3. If the compensation is based on a share of the insurance settlement, the exact percentage must be specified in the contract.
4. Initial expenses to be reimbursed to the public adjuster from the proceeds of the claim payment must be specified by type and the dollar estimates must be set forth in the contract. Additional expenses must be approved in writing by the insured.
5. Compensation provisions in a public adjuster contract may not be redacted in a copy of the contract provided to the commissioner.
6. If the insurer, not later than three days after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy, the public adjuster:
 - a. May not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim;
 - b. Shall inform the insured the loss recovery amount might not be increased by the insurer; and
 - c. Is entitled only to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim and expenses incurred by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.
7. A public adjuster contract may not contain a contract term that:
 - a. Allows for balance billing of the insured;
 - b. Allows a percentage fee to be collected by the public adjuster if money is due from an insurer, but not paid, or allows a public adjuster to collect the entire fee from the first check issued by an insurer, rather than a percentage of each check issued by an insurer;
 - c. Requires the insured to authorize an insurer to issue a check only in the name of the public adjuster;
 - d. Imposes collection costs or late fees; or
 - e. Precludes a public adjuster from pursuing civil remedies.
8. Before the signing of the contract the public adjuster shall provide the insured with a separate disclosure document regarding the claim process which states:
 - a. Property insurance policies obligate the insured to present a claim to the insurer for consideration.
 - b. The following three types of adjusters could be involved in the claim process:
 - (1) "Company adjuster" means an insurance adjuster who is an employee of an insurer. A company adjuster represents the interest of the insurer, is paid by the insurer, and will not charge the insured a fee.
 - (2) "Independent adjuster" means an insurance adjuster who is hired on a contract basis by an insurer to represent the interest of the insurer in the settlement of the

claim. An independent adjuster is paid by the insurer and will not charge the insured a fee.

- (3) "Public adjuster" means an insurance adjuster who does not work for an insurer. A public adjuster works for the insured to assist in the preparation, presentation, and settlement of the claim. The insured hires a public adjuster by signing a contract agreeing to pay a fee or commission based on a percentage of the settlement or other method of compensation.
- c. The insured is not required to hire a public adjuster to help the insured meet the insured's obligations under the policy, but has the right to do so.
- d. The insured has the right to initiate direct communications with the insured's attorney, the insurer, the company adjuster, and the insurer's attorney, or any person regarding the settlement of the insured's claim.
- e. The public adjuster is not a representative or employee of the insurer.
- f. The salary, fee, commission, or other consideration to be paid to a public adjuster is the obligation of the insured, not the insurer.
9. The contract must be executed in duplicate to provide an original contract to the public adjuster and to the insured. The original contract retained by the public adjuster must be available at all times for inspection without notice by the department.
10. The public adjuster shall provide the insurer a notification letter signed by the insured, authorizing the public adjuster to represent the insured's interest. The notification letter must include a copy of the signed contract.
11. The public adjuster shall give the insured written notice of the insured's rights as provided in this section.
12. Within three days after the claim is submitted to the insurer, the insured has the right to rescind the contract. The rescission must be in writing and mailed or delivered to the public adjuster at the address in the contract within the three business-day period.
13. If the insured exercises the right to rescind the contract, anything of value given by the insured under the contract must be returned to the insured within fifteen days following the receipt by the public adjuster of the rescission notice.
14. The commissioner may require a public adjuster to file a contract with the department in a manner prescribed by the commissioner.

26.1-26.8-14. Record retention.

1. A public adjuster shall maintain a complete record of each transaction as a public adjuster. The records required by this section include:

 - a. The name of the insured;
 - b. The date, location, and amount of the loss;
 - c. A copy of the contract between the public adjuster and the insured;
 - d. The name of the insurer, amount, expiration date, and policy number for each policy carried with respect to the loss;
 - e. An itemized statement of the amount recovered for the insured;

- f. An itemized statement of all compensation received by the public adjuster, from any source, in connection with the loss;
 - g. A register of all money received, deposited, disbursed, or withdrawn in connection with a transaction with an insured, including fees, transfers, and disbursements from a trust account and all transactions concerning all interest-bearing accounts;
 - h. The name of the public adjuster who executed the contract;
 - i. The name of the attorney representing the insured, if applicable, and the name of the claims representative of the insurer; and
 - j. Evidence of financial responsibility in a format prescribed by the commissioner.
2. A public adjuster shall maintain the records for at least six years after the termination of the transaction with an insured and shall open the records to examination by the department at all times.

26.1-26.8-15. Standards of conduct of public adjuster.

- 1. A public adjuster shall serve with objectivity and complete loyalty to the interest of the insured and in good faith shall render to the insured such information, counsel, and service, as within the knowledge, understanding, and opinion of the public adjuster will best serve the insurance claim needs and interest of the insured.
- 2. A public adjuster may not solicit or attempt to solicit an insured during the progress of a loss-producing occurrence, as defined in the insured's insurance contract.
- 3. A public adjuster may not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required under this chapter.
- 4. A public adjuster may not have a financial interest in any aspect of the claim, other than the salary, fee, commission, or other consideration established in the written contract with the insured. A financial interest includes ownership of, employment by, or other consideration received from an individual or business entity that performs work pertaining to damage related to the insured loss.
- 5. A public adjuster may not acquire an interest in salvage of property subject to the contract with the insured unless the public adjuster obtains written permission from the insured after settlement of the claim with the insurer.
- 6. A public adjuster may not refer or direct the insured to obtain needed repairs or services in connection with a loss from a person:
 - a. With which the public adjuster has a financial interest; or
 - b. From which the public adjuster may receive compensation or other consideration for the referral.
- 7. A public adjuster may not undertake the adjustment of a claim if the public adjuster is not competent and knowledgeable as to the terms and conditions of the insurance coverage or if the loss or coverage otherwise exceeds the current expertise of the public adjuster.
- 8. A public adjuster may not knowingly make a false oral or written material statement regarding a person engaged in the business of insurance to an insured client or potential insured client.
- 9. A public adjuster, while licensed pursuant to this chapter, may not represent or act as a company adjuster or independent adjuster in any circumstance.

10. A public adjuster may not enter a contract or accept a power of attorney that vests in the public adjuster the effective authority to choose the person that will perform repair work.
11. A public adjuster may not agree to a loss settlement without the insured's knowledge and consent.

26.1-26.8-16. Public adjuster fees.

1. A public adjuster may charge the insured a reasonable fee for public adjuster services.
2. A person may not accept a commission, service fee, or other valuable consideration for investigating or settling claims in this state if the person is required to be licensed under this chapter and is not licensed.
3. A public adjuster may not charge, agree to, or accept as compensation or reimbursement a payment, commission, fee, or other thing of value equal to or more than ten percent of an insurance settlement or proceeds resulting from a catastrophic disaster.
4. A public adjuster may not require, demand, or accept a fee, retainer, compensation, deposit, or other thing of value before settlement of a claim, unless the loss is being handled by the public adjuster on a time-plus-expense basis.

26.1-26.8-17. Rulemaking authority.

The commissioner may adopt rules to carry out this chapter.

26.1-26.8-18. Investigation by commissioner.

Within a reasonable time after receipt of a properly completed application for a license under this chapter, the commissioner may conduct an investigation and propound interrogatories concerning the applicant's qualifications, residence, business affiliations, and any other matter the commissioner believes necessary or advisable to determine compliance with this chapter or for the protection of the public.

26.1-26.8-19. Approval of examination by commissioner - Contents.

Each examination must be approved for use by the commissioner and must reasonably test the applicant's knowledge as to the policies and transactions to be handled under the license applied for, the duties and responsibilities of the licensee, and the pertinent insurance laws of this state.

26.1-26.8-20. Vendor authority.

The commissioner may contract with nongovernmental entities, including the national association of insurance commissioners or any affiliate or subsidiary the national association of insurance commissioners oversees, to perform any ministerial functions, including the collection of fees, related to public adjuster licensing.

26.1-26.8-21. Commissioner may make examinations and investigations.

Whenever the commissioner believes this chapter has been violated, the commissioner, at the expense of the public adjuster involved, may examine, at the offices of the public adjuster, whether located within or outside this state, all books, records, and papers of the public adjuster or the company with which the public adjuster is affiliated and any books, records, and papers of any insured within this state, and may examine under oath, the officers, managers, and public adjusters or the insured as to the violation.

26.1-26.8-22. Statute of limitations.

After the effective date of this Act, a civil action for the recovery of damages resulting from negligence or breach of contract brought against any person licensed under this chapter by any person claiming to have been injured as a result of the providing of public adjusting services or the failure to provide public adjusting services of a licensee may not be commenced in this state unless the action is commenced on or before the earlier of:

1. Two years from the date the alleged act, omission, or neglect is discovered or should have been discovered by exercise of reasonable diligence; or
2. Six years after performance of the service for which the claim for relief arises, unless discovery was prevented by the fraudulent conduct of the licensee.

SECTION 3. Chapter 26.1-39.2 of the North Dakota Century Code is created and enacted as follows:

26.1-39.2-01. Definitions.

As used in this chapter:

1. "Residential contractor" means a person in the business of contracting or offering to contract with an owner or possessor of residential real estate to:
 - a. Repair or replace a roof system or perform other exterior repair, replacement, construction, or reconstruction work on residential real estate;
 - b. Perform interior or exterior cleanup services on residential real estate; or
 - c. Arrange for, manage, or process the work referred to in subdivision a or b.
2. "Residential real estate" means a new or existing building, including a detached garage, constructed for habitation by at least one but no more than four families.
3. "Roof system" includes roof coverings, roof sheathing, roof weatherproofing, and insulation.

26.1-39.2-02. Contract to be paid from proceeds of property and casualty insurance policy - Right to cancel - Duties.

1. A person that enters a written contract with a residential contractor to provide goods or services to be paid from the proceeds of a property and casualty insurance policy may cancel the contract before midnight on the later of the fifth business day after the person has:
 - a. Entered the written contract; or
 - b. Received written notice from the person's insurer that all or part of the claim or contract is not a covered loss under the insurance policy.
2. The written contract must include a statement that the insured homeowner has the right to cancel the contract in accordance with subsection 1.
3. The person seeking to cancel the contract shall evidence the cancellation by giving the residential contractor a signed and dated copy of written notice of the cancellation.
 - a. The notice of cancellation may be delivered or mailed to the address of the residential contractor's place of business as stated in the contract.
 - b. The notice of cancellation must include a copy of the written notice from the person's insurer, if applicable, to the effect that all or part of the claim or contract is not a covered loss under the insurance policy.

- c. Notice of cancellation given by mail is effective upon deposit in the United States mail, postage prepaid, if properly addressed to the residential contractor.
 - d. Notice of cancellation is not required to be in a particular form and is sufficient if the notice indicates the intent of the insured not to be bound by the contract.
4. Within ten days after a contract to provide goods or services to be paid from the proceeds of a property and casualty insurance policy has been canceled by notification pursuant to this section, the residential contractor shall tender to the person canceling the contract any payments, partial payments, or deposits made by the person and any note or other evidence of indebtedness, except if the residential contractor has provided goods or services agreed to by the person in writing to be necessary to prevent damage to the premises, the residential contractor is entitled to be paid the reasonable value of those goods or services. A contract provision to provide goods or services to be paid from the proceeds of a property and casualty insurance policy requiring the payment of a fee that is not for those goods or services is not enforceable against a person that has canceled a contract pursuant to this section.

26.1-39.2-03. Prohibited acts.

A residential contractor may not promise to rebate a portion of an insurance deductible as an inducement to the sale of goods or services. A promise to rebate a portion of an insurance deductible includes granting an allowance or offering a discount against the fees to be charged or paying an insured or a person associated with the residential real estate a form of compensation, except for an item of nominal value.

26.1-39.2-04. Post-loss assignment of rights or benefits.

A post-loss assignment of rights or benefits to a residential contractor under a property and casualty insurance policy insuring residential real estate is subject to each of the following:

- 1. The assignment may authorize a residential contractor to be named as a copayee for the payment of benefits under a property and casualty insurance policy covering residential real estate.
- 2. The assignment must be provided to the insurer of the residential real estate within five business days after execution.
- 3. The assignment must include a statement that the residential contractor made no assurances the claimed loss will be fully covered by an insurance contract and must include the following notice in capitalized fourteen-point type:

"YOU ARE AGREEING TO ASSIGN CERTAIN RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY. THE ITEMIZED DESCRIPTION OF THE WORK TO BE DONE SHOWN IN THIS ASSIGNMENT FORM HAS NOT BEEN AGREED TO BY THE INSURER. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING.

THE INSURER MAY ONLY PAY FOR THE COST TO REPAIR OR REPLACE DAMAGED PROPERTY CAUSED BY A COVERED PERIL, SUBJECT TO THE TERMS OF THE POLICY."

- 4. The assignment may not impair the interest of a mortgagee listed on the declarations page of the property and casualty insurance policy that is the subject of the assignment.
- 5. The assignment may not prevent or inhibit an insurer from communicating with the named insured or mortgagee listed on the declarations page of the property and casualty insurance policy that is the subject of the assignment.
- 6. The assignment must include a statement that the insured homeowner has the right to cancel the assignment in accordance with subsection 1 of section 26.1-39.2-02.

26.1-39.2-05. Itemized description of work.

Before commencement of repair or replacement work, a residential contractor shall furnish the insured and insurer with an itemized description of the work to be done and the materials, labor, and fees for repair or replacement of the damaged residential real estate and the total itemized amount agreed to be paid for the work to be performed, except the description may not limit the insured or residential contractor from identifying other goods and services necessary to complete repairs or replacement associated with a covered loss.

26.1-39.2-06. Notice required.

A written contract, repair estimate, or work order prepared by a residential contractor to provide goods or services to be paid from the proceeds of a property and casualty insurance policy must include the following notice of the prohibition contained in section 26.1-39.2-03 in capitalized fourteen-point type which must be signed by the named insured and sent to the named insured's insurer before payment of proceeds under the applicable insurance policy:

"IT IS A VIOLATION OF THE INSURANCE LAWS OF NORTH DAKOTA TO REBATE ANY PORTION OF AN INSURANCE DEDUCTIBLE AS AN INDUCEMENT TO THE INSURED TO ACCEPT A RESIDENTIAL CONTRACTOR'S PROPOSAL TO REPAIR DAMAGED PROPERTY. REBATE OF A DEDUCTIBLE INCLUDES GRANTING AN ALLOWANCE OR OFFERING A DISCOUNT AGAINST THE FEES TO BE CHARGED FOR WORK TO BE PERFORMED OR PAYING THE INSURED HOMEOWNER THE DEDUCTIBLE AMOUNT SET FORTH IN THE INSURANCE POLICY.

THE INSURED HOMEOWNER IS PERSONALLY RESPONSIBLE FOR PAYMENT OF THE DEDUCTIBLE. THE INSURANCE FRAUD STATUTES AND NORTH DAKOTA CRIMINAL STATUTES PROHIBIT THE INSURED HOMEOWNER FROM ACCEPTING FROM A RESIDENTIAL CONTRACTOR A REBATE OF THE DEDUCTIBLE OR OTHERWISE ACCEPTING AN ALLOWANCE OR DISCOUNT FROM THE RESIDENTIAL CONTRACTOR TO COVER THE COST OF THE DEDUCTIBLE. VIOLATIONS MAY BE PUNISHABLE BY CIVIL OR CRIMINAL PENALTIES."

26.1-39.2-07. Violation of the chapter.

A contract entered with a residential contractor is void if the residential contractor violates this chapter.

26.1-39.2-08. Rulemaking authority.

The commissioner may adopt rules to carry out this chapter.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1219.

House Vote: Yeas 81 Nays 9 Absent 4

Senate Vote: Yeas 44 Nays 0 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State