

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1219

Introduced by

Representative Keiser

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

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

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

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

13 **26.1-26.8-01. Scope.**

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

17 **26.1-26.8-02. Definitions.**

18 As used in this chapter:

- 19 1. "Business entity" has the same meaning as provided in section 26.1-26-02.
- 20 2. "Department" means the insurance department.
- 21 3. "Home state" means the state in which the principal place of residence or principal
22 place of business of the public adjuster is located.
- 23 4. "Insured" means a person insured under the insurance policy against which the claim
24 is made.

- 1 5. "Public adjuster" means a person that, for compensation, does the following:
2 a. Acts for or aids an insured in negotiating for or effecting the settlement of a
3 first-party claim for loss or damage to real or personal property of the insured;
4 b. Advertises for employment as a public adjuster of first-party claims or otherwise
5 solicits business or represents to the public the person is a public adjuster of
6 first-party claims for loss or damage to real or personal property of an insured; or
7 c. Solicits the business of investigating or adjusting losses or of advising an insured
8 about first-party claims for loss or damage to real or personal property of the
9 insured.
- 10 6. "Uniform business entity application" means the uniform business entity application
11 prescribed by the commissioner which conforms substantially to the uniform business
12 entity application for resident and nonresident business entities adopted by the
13 national association of insurance commissioners.
- 14 7. "Uniform individual application" means the uniform individual application prescribed by
15 the commissioner which conforms substantially to the uniform application for individual
16 adjuster licensing adopted by the national association of insurance commissioners.
- 17 **26.1-26.8-03. License required - Penalty.**
- 18 1. A person may not operate as or represent that the person is a public adjuster in this
19 state unless the person is licensed as a public adjuster in accordance with this
20 chapter.
- 21 2. A public adjuster may not misrepresent to an insured the public adjuster is an adjuster
22 representing an insurer in any capacity, including acting as an employee of the insurer
23 or acting as an independent adjuster.
- 24 3. A public adjuster may not solicit or enter an agreement for the repair or replacement of
25 damaged property on which the public adjuster has engaged to adjust or settle claims
26 for losses or damages of the insured.
- 27 4. Except as provided in subsection 1, licensure as a public adjuster is not required for:
28 a. An attorney admitted to practice in this state, in the course of acting in the
29 attorney's professional capacity as an attorney;
30 b. A person that negotiates or settles claims arising under a life or health insurance
31 policy or an annuity contract;

- 1 c. An individual employed for the limited purpose of obtaining facts surrounding a
2 loss or furnishing technical assistance to a licensed public adjuster, including a
3 photographer, estimator, private investigator, engineer, or handwriting expert;
4 d. A licensed health care provider, or an employee of a licensed health care
5 provider, who prepares or files a health claim form on behalf of a patient; or
6 e. A person that settles subrogation claims between insurers.
7 5. A person willfully violating subsection 1 or 2 is guilty of a class C felony.

8 **26.1-26.8-04. Application for resident license.**

9 An individual applying for a resident public adjuster license shall submit to the
10 commissioner a completed uniform individual application and declare under penalty of denial,
11 suspension, or revocation of the license that the statements made in the application are true,
12 correct, and complete to the best of the individual's knowledge and belief. The commissioner
13 shall approve the application if the commissioner determines the individual:

- 14 1. Is at least eighteen years of age;
15 2. Has a principal place of residence or principal place of business in this state;
16 3. Has not committed an act that is a ground for denial, suspension, or revocation set
17 forth in section 26.1-26.8-10;
18 4. Has paid the resident licensing fee, not to exceed one hundred dollars, prescribed by
19 the commissioner;
20 5. Except as otherwise provided in this chapter, has passed the examinations required by
21 section 26.1-26.8-07;
22 6. Is trustworthy, reliable, and of good reputation;
23 7. Is financially responsible to exercise the license and has provided proof of financial
24 responsibility, as required in section 26.1-26.8-11;
25 8. Maintains an office in this state, with public access to the office by reasonable
26 appointment or regular business hours; and
27 9. Has completed a criminal history record check as provided in section 12-60-24.
28 a. All costs associated with the criminal history record check under this section are
29 the responsibility of the applicant.
30 b. This subsection does not apply to license continuation under section
31 26.1-26.8-09 or to an individual who applies for a public adjuster license within

1 twelve months following the cancellation or expiration of a valid resident public
2 adjuster license issued by the department, unless the license was suspended or
3 revoked.

4 c. The commissioner may make arrangements, including contracting with an
5 outside service, for the collection and transmission of fingerprints for conducting
6 criminal history record checks.

7 **26.1-26.8-05. Nonresident license reciprocity.**

8 1. An individual applying for a nonresident public adjuster license shall apply to the
9 commissioner in the manner prescribed by the commissioner and declare under
10 penalty of denial, suspension, or revocation of the license that the statements made in
11 the application are true, correct, and complete to the best of the individual's knowledge
12 and belief. The commissioner shall approve the application if the commissioner
13 determines the applicant:

14 a. Is licensed as a resident public adjuster and in good standing in the individual's
15 home state and the home state awards nonresident public adjuster licenses to
16 residents of this state on the same basis as provided for in this chapter; and

17 b. Has paid the nonresident licensing fee, not to exceed one hundred dollars,
18 prescribed by the commissioner.

19 2. The commissioner may verify the licensing status of a nonresident public adjuster
20 through the producer data base maintained by the national association of insurance
21 commissioners, or the association's affiliates or subsidiaries.

22 3. As a condition to continuation of a nonresident public adjuster license, a nonresident
23 public adjuster shall maintain a resident public adjuster license in good standing in the
24 individual's home state.

25 4. A licensed nonresident public adjuster shall surrender immediately to the
26 commissioner the individual's nonresident public adjuster license and the
27 commissioner shall terminate the individual's nonresident public adjuster license if the
28 home state public adjuster license terminates for any reason, unless the individual has
29 been issued a license as a resident public adjuster in a new home state and the new
30 home state has reciprocity with this state. A licensed nonresident public adjuster shall
31 notify the commissioner of a change to a new home state as soon as possible, but no

1 later than thirty days after receiving a license as a resident public adjuster from the
2 new home state. The licensed nonresident public adjuster shall include both the new
3 and the old addresses in the notice to the commissioner.

4 **26.1-26.8-06. License required for business entity.**

- 5 1. A business entity acting as a public adjuster in this state must be licensed as a public
6 adjuster license. A business entity applying for a public adjuster license shall submit to
7 the commissioner a completed uniform business entity application and declare under
8 penalty of denial, suspension, or revocation of the license that the statements made in
9 the application are true, correct, and complete to the best of the knowledge and belief
10 of the entity. The commissioner shall approve the application if the commissioner
11 determines the applicant:
- 12 a. Has paid the business entity licensing fee, not to exceed one hundred fifty
13 dollars, prescribed by the commissioner; and
- 14 b. Has designated a resident public adjuster or a nonresident public adjuster
15 licensed pursuant to this chapter to be responsible for compliance with the
16 insurance laws, rules, and regulations of this state for the business entity.
- 17 2. The commissioner may require additional documents be submitted that are reasonably
18 necessary to verify the information contained in an application pursuant to this section.

19 **26.1-26.8-07. Examination.**

- 20 1. An individual applying for a resident public adjuster license shall pass a written
21 examination, unless exempt pursuant to section 26.1-26.8-08. The examination must
22 test the individual's knowledge concerning the duties and responsibilities of a public
23 adjuster and the insurance laws and regulations of this state and be conducted as
24 prescribed by the commissioner.
- 25 2. The commissioner may make arrangements, including contracting with an outside
26 testing service, for administering the written examination required pursuant to
27 subsection 1 and collecting the nonrefundable fee as prescribed by the commissioner
28 as set forth in section 26.1-01-07.
- 29 3. An individual applying for examination shall remit a nonrefundable fee as prescribed
30 by the commissioner as set forth in section 26.1-01-07.

1 4. An individual who fails to appear for the examination as scheduled or fails to pass the
2 examination may reapply for an examination if the individual remits all required fees
3 and forms before being rescheduled for another examination.

4 **26.1-26.8-08. Exemptions from examination.**

5 1. An individual who applies for a resident public adjuster license in this state who was
6 previously licensed as a public adjuster in another state is not required to complete an
7 examination. This exemption is available only if:

8 a. The applicant is currently licensed in another state; or

9 b. The commissioner receives the application within ninety days of the cancellation
10 of the applicant's previous license and the prior state issues a certification that, at
11 the time of cancellation, the applicant was in good standing in the state or the
12 state's public adjuster database records, maintained by the national association
13 of insurance commissioners or the association's affiliates or subsidiaries, indicate
14 the applicant is or was licensed in good standing.

15 2. To become a resident licensee pursuant to section 26.1-26.8-04, an individual licensed
16 as a public adjuster in another state who moves to this state shall apply within ninety
17 days of establishing legal residence in this state. An examination may not be required
18 of that individual to obtain a resident public adjuster license unless the commissioner
19 determines otherwise by rule.

20 3. If an individual who applies for a resident public adjuster license previously was
21 licensed as either a resident public adjuster or a nonresident public adjuster in this
22 state, the commissioner may not require the individual to complete an examination if:

23 a. The application is received within twelve months of the termination of the
24 previous license in this state; and

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

26 **26.1-26.8-09. License - Renewal - Reinstatement.**

27 1. The commissioner shall issue a resident public adjuster license or nonresident public
28 adjuster license to an individual who meets the necessary requirements of this
29 chapter.

- 1 a. A resident public adjuster license and a nonresident public adjuster license expire
2 on the last day of the month of the licensed public adjuster's birthday following
3 the two-year anniversary of issuance of a license by the commissioner.
- 4 b. To renew a license, a licensed resident public adjuster and a licensed
5 nonresident public adjuster shall file a biennial license continuation in the form
6 and manner prescribed by the commissioner and pay a fee of twenty-five dollars.
7 The commissioner shall give a licensee at least sixty days' notice of the biennial
8 license continuation filing deadline. A resident public adjuster or a nonresident
9 public adjuster who allows the license to lapse may, within the twelve-month
10 period immediately following the expiration date, reinstate the same license
11 without the necessity of passing a written examination, upon payment of a
12 reinstatement fee, not to exceed one hundred twenty-five dollars, prescribed by
13 the commissioner in addition to the renewal fee.
- 14 c. The commissioner may grant an individual licensee who is unable to comply with
15 license renewal procedures due to military service or some other extenuating
16 circumstance, including a long-term medical disability, a waiver of an examination
17 requirement or a fine, fee, or sanction imposed for failure to comply with renewal
18 procedures.
- 19 2. The commissioner shall issue a business entity public adjuster license to a business
20 entity that meets the necessary requirements of this chapter.
- 21 a. A business entity public adjuster license expires on the two-year anniversary of
22 issuance of a license by the commissioner.
- 23 b. To renew a license, a licensed business entity public adjuster shall file a biennial
24 license continuation in the form and manner prescribed by the commissioner.
- 25 c. A business entity public adjuster license may be renewed within the ninety-day
26 period immediately preceding the expiration date upon payment of the renewal
27 fee, not to exceed one hundred fifty dollars, prescribed by the commissioner. A
28 business entity public adjuster that allows the license to lapse may, within the
29 thirty-day period immediately following the expiration date, renew the same
30 license upon payment of a late renewal fee, not to exceed one hundred
31 twenty-five dollars, prescribed by the commissioner in addition to the renewal fee.

- 1 d. A business entity public adjuster license renewed within the thirty-day period
2 immediately following the expiration date pursuant to this section is deemed to
3 have been renewed before the expiration date.
- 4 3. A license issued pursuant to this chapter must contain the licensee's name, address,
5 and license number; the date of issuance; the lines of authority; the expiration date;
6 and any information the commissioner deems necessary.
- 7 4. Within thirty days after the change, a licensee shall inform the commissioner, by any
8 means acceptable to the commissioner, of a change of legal name, address, or other
9 information submitted on the application.
- 10 a. A licensee who fails to provide this notification of change is subject to a fine by
11 the commissioner of not more than five hundred dollars per violation, suspension
12 of the license until the change is reported to the commissioner, or both.
- 13 b. A licensee doing business under a name other than the licensee's legal name
14 shall notify the commissioner before using the assumed name.
- 15 5. A licensee is subject to the provisions of chapter 26.1-04.
- 16 6. A licensee shall report to the commissioner any administrative action taken against the
17 licensee in another jurisdiction or by another governmental agency in this state within
18 thirty days of the final disposition of the matter. The report must include a copy of the
19 order, consent to order, or other relevant legal documents.
- 20 7. Within thirty days after a criminal conviction, a licensee shall report to the
21 commissioner any criminal conviction of the licensee taken in any jurisdiction. The
22 report must include a copy of the initial complaint, the order issued by the court, and
23 any other relevant legal documents.
- 24 8. The commissioner may contract with nongovernmental entities, including the national
25 association of insurance commissioners, or affiliates or subsidiaries the national
26 association oversees, to perform ministerial functions, including the collection of fees,
27 related to the administration of this chapter.
- 28 9. The commissioner may adopt rules establishing license renewal procedures.
- 29 **26.1-26.8-10. License denial, nonrenewal, or revocation - Penalty.**
- 30 1. The commissioner may suspend, revoke, or refuse to issue or renew a resident public
31 adjuster license, nonresident public adjuster license, or business entity public adjuster

- 1 license or may levy an administrative fine in accordance with subsection 4, or a
2 combination of those actions, for the following causes:
- 3 a. Providing incorrect, misleading, incomplete, or materially untrue information in
4 the license application;
- 5 b. Violating any provision of this title or violating a rule, regulation, subpoena, or
6 order of the commissioner or another state's insurance commissioner;
- 7 c. Obtaining or attempting to obtain a license through misrepresentation or fraud;
- 8 d. Improperly withholding, misappropriating, or converting money or property
9 received in the course of doing business;
- 10 e. Intentionally misrepresenting the terms of an actual or proposed insurance
11 contract or application for insurance;
- 12 f. Having been convicted of a felony or a class A or B misdemeanor;
- 13 g. Having admitted or been found to have committed an insurance unfair trade
14 practice, an unfair claims settlement practice, or fraud;
- 15 h. Using fraudulent, coercive, or dishonest practices or demonstrating
16 incompetence, untrustworthiness, or financial irresponsibility in the conduct of
17 business in this state or elsewhere or failing to comply with section 26.1-26.8-15;
- 18 i. Having an insurance or public adjuster license, or its equivalent, denied,
19 suspended, placed on probation, or revoked in this state or in another state,
20 province, district, or territory;
- 21 j. Forging another person's name to an application for insurance or to a document
22 related to an insurance transaction;
- 23 k. Improperly using notes or other reference materials to complete an examination
24 for an insurance license;
- 25 l. Knowingly accepting insurance business from a person that is not licensed;
- 26 m. Failing to comply with an administrative or court order imposing a child support
27 obligation;
- 28 n. Failing to pay state income tax or comply with an administrative or court order
29 directing payment of state income tax; or
- 30 o. Failing to maintain in good standing a resident license in the public adjuster's
31 home state.

- 1 2. If the commissioner does not renew or denies an application for a public adjuster
2 license, the commissioner shall notify the applicant or licensee and advise, in writing,
3 the reason for the denial or nonrenewal of the license. Within thirty days of norenewal
4 or denial, the applicant or licensee may make written demand upon the commissioner
5 for a hearing before the commissioner to determine the reasonableness of the
6 commissioner's action. The hearing must be held pursuant to chapter 28-32.
- 7 3. A business entity public adjuster license may be suspended, revoked, or denied if the
8 commissioner finds, after notice and hearing, that a violation committed by an
9 individual licensee providing services through the business entity was known or should
10 have been known by one or more of the partners, officers, or managers acting on
11 behalf of the business entity and the violation neither was reported to the
12 commissioner nor was corrective action taken in relation to the violation.
- 13 4. In addition to or in lieu of an applicable denial, suspension, or revocation of a license,
14 a person violating this chapter may, after notice and hearing, be subject to an
15 administrative fine of not more than ten thousand dollars per violation. A fine may be
16 enforced in the same manner as civil judgments. A person charged with a violation of
17 this chapter may waive the right to a hearing and consent to the discipline the
18 commissioner determines is appropriate. Chapter 28-32 governs all hearings held
19 pursuant to this subsection.
- 20 5. The commissioner may enforce this chapter and impose a penalty or remedy
21 authorized by this chapter against a person under investigation for or charged with a
22 violation of this chapter even if the person's license has been surrendered or lapsed
23 by operation of law. A disciplinary proceeding may not be instituted against a person
24 after three years from the termination of the person's license.

25 **26.1-26.8-11. Proof of bond or insurance.**

- 26 1. At the time of issuance of a resident public adjuster license or a nonresident public
27 adjuster license and for the duration of the license, an applicant shall maintain a surety
28 bond or proof of insurance satisfactory to the commissioner for the use and benefit of
29 the commissioner for insureds that have remitted fees, retainers, compensation,
30 deposits, or other things of value to the public adjuster in the course of the public
31 adjuster's business. The bond:

- 1 a. Must be a minimum of twenty thousand dollars; and
- 2 b. May not be terminated by the surety company or public adjuster unless written
- 3 notice has been filed with the commissioner and submitted to the public adjuster
- 4 at least sixty days before the termination.
- 5 2. The commissioner may request the evidence of financial responsibility at any time the
- 6 commissioner deems relevant.
- 7 3. A public adjuster immediately shall notify the commissioner if evidence of financial
- 8 responsibility terminates or becomes impaired. The authority to act as a public
- 9 adjuster automatically terminates if the evidence of financial responsibility terminates
- 10 or becomes impaired.

11 **26.1-26.8-12. Continuing education.**

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

1 rule and on forms established by rule and with a fee of fifty dollars. The commissioner
2 shall make a final determination as to accreditation and assignment of credit-hours for
3 continuing education courses.

4 **26.1-26.8-13. Contract between public adjuster and insured.**

- 5 1. A contract for a public adjuster's services must be in writing and contain the following
6 terms:
- 7 a. Legible full name of the public adjuster signing the contract, as specified in
8 commissioner records;
 - 9 b. Home state, business address, and telephone number;
 - 10 c. Public adjuster license number;
 - 11 d. Title of "Public Adjuster Contract";
 - 12 e. Insured's full name and street address, insurer name, and insurance policy
13 number, if known or upon notification;
 - 14 f. Description of the loss and the location of the loss, if applicable;
 - 15 g. Description of services to be provided to the insured;
 - 16 h. Signatures of the public adjuster and the insured;
 - 17 i. The date the contract was signed by the public adjuster and the date the contract
18 was signed by the insured;
 - 19 j. Attestation language stating the public adjuster is fully bonded pursuant to state
20 law; and
 - 21 k. The specific amount of compensation, including the full salary, fee, commission,
22 or other consideration the public adjuster is to receive for services.
- 23 2. The contract may specify the public adjuster must be named as a co-payee on an
24 insurer's payment of a claim.
- 25 3. If the compensation is based on a share of the insurance settlement, the exact
26 percentage must be specified in the contract.
- 27 4. Initial expenses to be reimbursed to the public adjuster from the proceeds of the claim
28 payment must be specified by type and the dollar estimates must be set forth in the
29 contract. Additional expenses must be approved in writing by the insured.
- 30 5. Compensation provisions in a public adjuster contract may not be redacted in a copy
31 of the contract provided to the commissioner.

- 1 6. If the insurer, not later than three days after the date on which the loss is reported to
2 the insurer, either pays or commits in writing to pay to the insured the policy limit of the
3 insurance policy, the public adjuster:
- 4 a. May not receive a commission consisting of a percentage of the total amount
5 paid by an insurer to resolve a claim;
- 6 b. Shall inform the insured the loss recovery amount might not be increased by the
7 insurer; and
- 8 c. Is entitled only to reasonable compensation from the insured for services
9 provided by the public adjuster on behalf of the insured, based on the time spent
10 on a claim and expenses incurred by the public adjuster, until the claim is paid or
11 the insured receives a written commitment to pay from the insurer.
- 12 7. A public adjuster contract may not contain a contract term that:
- 13 a. Allows for balance billing of the insured;
- 14 b. Allows a percentage fee to be collected by the public adjuster if money is due
15 from an insurer, but not paid, or allows a public adjuster to collect the entire fee
16 from the first check issued by an insurer, rather than a percentage of each check
17 issued by an insurer;
- 18 c. Requires the insured to authorize an insurer to issue a check only in the name of
19 the public adjuster;
- 20 d. Imposes collection costs or late fees; or
- 21 e. Precludes a public adjuster from pursuing civil remedies.
- 22 8. Before the signing of the contract the public adjuster shall provide the insured with a
23 separate disclosure document regarding the claim process which states:
- 24 a. Property insurance policies obligate the insured to present a claim to the insurer
25 for consideration.
- 26 b. The following three types of adjusters could be involved in the claim process:
- 27 (1) "Company adjuster" means an insurance adjuster who is an employee of an
28 insurer. A company adjuster represents the interest of the insurer, is paid by
29 the insurer, and will not charge the insured a fee.
- 30 (2) "Independent adjuster" means an insurance adjuster who is hired on a
31 contract basis by an insurer to represent the interest of the insurer in the

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

1 **26.1-26.8-14. Record retention.**

- 2 1. A public adjuster shall maintain a complete record of each transaction as a public
3 adjuster. The records required by this section include:
- 4 a. The name of the insured;
 - 5 b. The date, location, and amount of the loss;
 - 6 c. A copy of the contract between the public adjuster and the insured;
 - 7 d. The name of the insurer, amount, expiration date, and policy number for each
8 policy carried with respect to the loss;
 - 9 e. An itemized statement of the amount recovered for the insured;
 - 10 f. An itemized statement of all compensation received by the public adjuster, from
11 any source, in connection with the loss;
 - 12 g. A register of all money received, deposited, disbursed, or withdrawn in
13 connection with a transaction with an insured, including fees, transfers, and
14 disbursements from a trust account and all transactions concerning all
15 interest-bearing accounts;
 - 16 h. The name of the public adjuster who executed the contract;
 - 17 i. The name of the attorney representing the insured, if applicable, and the name of
18 the claims representative of the insurer; and
 - 19 j. Evidence of financial responsibility in a format prescribed by the commissioner.
- 20 2. A public adjuster shall maintain the records for at least six years after the termination
21 of the transaction with an insured and shall open the records to examination by the
22 department at all times.

23 **26.1-26.8-15. Standards of conduct of public adjuster.**

- 24 1. A public adjuster shall serve with objectivity and complete loyalty to the interest of the
25 insured and in good faith shall render to the insured such information, counsel, and
26 service, as within the knowledge, understanding, and opinion of the public adjuster will
27 best serve the insurance claim needs and interest of the insured.
- 28 2. A public adjuster may not solicit or attempt to solicit an insured during the progress of
29 a loss-producing occurrence, as defined in the insured's insurance contract.
- 30 3. A public adjuster may not permit an unlicensed employee or representative of the
31 public adjuster to conduct business for which a license is required under this chapter.

- 1 4. A public adjuster may not have a financial interest in any aspect of the claim, other
2 than the salary, fee, commission, or other consideration established in the written
3 contract with the insured. A financial interest includes ownership of, employment by, or
4 other consideration received from an individual or business entity that performs work
5 pertaining to damage related to the insured loss.
- 6 5. A public adjuster may not acquire an interest in salvage of property subject to the
7 contract with the insured unless the public adjuster obtains written permission from the
8 insured after settlement of the claim with the insurer.
- 9 6. A public adjuster may not refer or direct the insured to obtain needed repairs or
10 services in connection with a loss from a person:
 - 11 a. With which the public adjuster has a financial interest; or
 - 12 b. From which the public adjuster may receive compensation or other consideration
13 for the referral.
- 14 7. A public adjuster may not undertake the adjustment of a claim if the public adjuster is
15 not competent and knowledgeable as to the terms and conditions of the insurance
16 coverage or if the loss or coverage otherwise exceeds the current expertise of the
17 public adjuster.
- 18 8. A public adjuster may not knowingly make a false oral or written material statement
19 regarding a person engaged in the business of insurance to an insured client or
20 potential insured client.
- 21 9. A public adjuster, while licensed pursuant to this chapter, may not represent or act as a
22 company adjuster or independent adjuster in any circumstance.
- 23 10. A public adjuster may not enter a contract or accept a power of attorney that vests in
24 the public adjuster the effective authority to choose the person that will perform repair
25 work.
- 26 11. A public adjuster may not agree to a loss settlement without the insured's knowledge
27 and consent.

28 **26.1-26.8-16. Public adjuster fees.**

- 29 1. A public adjuster may charge the insured a reasonable fee for public adjuster services.

1 2. A person may not accept a commission, service fee, or other valuable consideration
2 for investigating or settling claims in this state if the person is required to be licensed
3 under this chapter and is not licensed.

4 3. A public adjuster may not charge, agree to, or accept as compensation or
5 reimbursement a payment, commission, fee, or other thing of value equal to or more
6 than ten percent of an insurance settlement or proceeds resulting from a catastrophic
7 disaster.

8 4. A public adjuster may not require, demand, or accept a fee, retainer, compensation,
9 deposit, or other thing of value before settlement of a claim, unless the loss is being
10 handled by the public adjuster on a time-plus-expense basis.

11 **26.1-26.8-17. Rulemaking authority.**

12 The commissioner may adopt rules to carry out this chapter.

13 **26.1-26.8-18. Investigation by commissioner.**

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

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

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

24 **26.1-26.8-20. Vendor authority.**

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

29 **26.1-26.8-21. Commissioner may make examinations and investigations.**

30 Whenever the commissioner believes this chapter has been violated, the commissioner, at
31 the expense of the public adjuster involved, may examine, at the offices of the public adjuster,

1 whether located within or outside this state, all books, records, and papers of the public adjuster
2 or the company with which the public adjuster is affiliated and any books, records, and papers
3 of any insured within this state, and may examine under oath, the officers, managers, and public
4 adjusters or the insured as to the violation.

5 **26.1-26.8-22. Statute of limitations.**

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

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

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

17 **26.1-39.2-01. Definitions.**

18 As used in this chapter:

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

1 **26.1-39.2-02. Contract to be paid from proceeds of property and casualty insurance**
2 **policy - Right to cancel - Duties.**

3 1. A person that enters a written contract with a residential contractor to provide goods or
4 services to be paid from the proceeds of a property and casualty insurance policy may
5 cancel the contract before midnight on the later of the fifth business day after the
6 person has:

7 a. Entered the written contract; or

8 b. Received written notice from the person's insurer that all or part of the claim or
9 contract is not a covered loss under the insurance policy.

10 2. The written contract must include a statement that the insured homeowner has the
11 right to cancel the contract in accordance with subsection 1.

12 3. The person seeking to cancel the contract shall evidence the cancellation by giving the
13 residential contractor a signed and dated copy of written notice of the cancellation.

14 a. The notice of cancellation may be delivered or mailed to the address of the
15 residential contractor's place of business as stated in the contract.

16 b. The notice of cancellation must include a copy of the written notice from the
17 person's insurer, if applicable, to the effect that all or part of the claim or contract
18 is not a covered loss under the insurance policy.

19 c. Notice of cancellation given by mail is effective upon deposit in the United States
20 mail, postage prepaid, if properly addressed to the residential contractor.

21 d. Notice of cancellation is not required to be in a particular form and is sufficient if
22 the notice indicates the intent of the insured not to be bound by the contract.

23 4. Within ten days after a contract to provide goods or services to be paid from the
24 proceeds of a property and casualty insurance policy has been canceled by
25 notification pursuant to this section, the residential contractor shall tender to the
26 person canceling the contract any payments, partial payments, or deposits made by
27 the person and any note or other evidence of indebtedness, except if the residential
28 contractor has provided goods or services agreed to by the person in writing to be
29 necessary to prevent damage to the premises, the residential contractor is entitled to
30 be paid the reasonable value of those goods or services. A contract provision to
31 provide goods or services to be paid from the proceeds of a property and casualty

1 insurance policy requiring the payment of a fee that is not for those goods or services
2 is not enforceable against a person that has canceled a contract pursuant to this
3 section.

4 **26.1-39.2-03. Prohibited acts.**

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

10 **26.1-39.2-04. Post-loss assignment of rights or benefits.**

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

13 1. The assignment may authorize a residential contractor to be named as a copayee for
14 the payment of benefits under a property and casualty insurance policy covering
15 residential real estate.

16 2. The assignment must be provided to the insurer of the residential real estate within
17 five business days after execution.

18 3. The assignment must include a statement that the residential contractor made no
19 assurances the claimed loss will be fully covered by an insurance contract and must
20 include the following notice in capitalized fourteen-point type:

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

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

29 4. The assignment may not impair the interest of a mortgagee listed on the declarations
30 page of the property and casualty insurance policy that is the subject of the
31 assignment.

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

6 **26.1-39.2-05. Itemized description of work.**

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

13 **26.1-39.2-06. Notice required.**

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

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

26 THE INSURED HOMEOWNER IS PERSONALLY RESPONSIBLE FOR PAYMENT OF THE
27 DEDUCTIBLE. THE INSURANCE FRAUD STATUTES AND NORTH DAKOTA CRIMINAL
28 STATUTES PROHIBIT THE INSURED HOMEOWNER FROM ACCEPTING FROM A
29 RESIDENTIAL CONTRACTOR A REBATE OF THE DEDUCTIBLE OR OTHERWISE
30 ACCEPTING AN ALLOWANCE OR DISCOUNT FROM THE RESIDENTIAL CONTRACTOR TO

1 COVER THE COST OF THE DEDUCTIBLE. VIOLATIONS MAY BE PUNISHABLE BY CIVIL
2 OR CRIMINAL PENALTIES."

3 **26.1-39.2-07. Violation of the chapter.**

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

6 **26.1-39.2-08. Rulemaking authority.**

7 The commissioner may adopt rules to carry out this chapter.