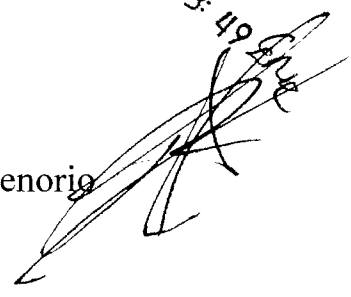


I MINA' BENTE NUEBI NA LIHESLATURAN GUÅHAN  
2008 (SECOND) Regular Session

2008 APR -4 PM 3:49  


Bill No. 259(cc)

Introduced by:

Ray Tenorio

**AN ACT TO ADD A NEW ARTICLE 9 TO CHAPTER 15 OF  
22GCA RELATIVE TO INSURANCE ADJUSTERS.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2

3 **Section 1.** A new Article 9 is hereby *added* to Chapter 14 of 22GCA to read:

4

5 **Article 9**

6 **LICENSING OF ADJUSTERS**

7 **§15900. Definitions.**

8 For the purposes of this Article of this title, the following terms have the  
9 meanings indicated.

10 (1) "License" means a license issued by the Commissioner to act as a  
11 insurance adjuster.

12 (2) "Licensee" means any person licensed on Guam to do business as a  
13 insurance adjuster.

14 (3) "Adjuster" shall include any person who, for compensation or any other  
15 thing of value:

1           a. Acts or aids, solely in relation to first party claims arising under  
2 insurance contracts that insure the real or personal property of the insured, on  
3 behalf of an insured individual in negotiating for, or effecting the settlement of, a  
4 claim for loss or damage covered by an insurance contract;

5           b. Advertises for employment as an adjuster of insurance claims or  
6 solicits business or represents oneself to the public as an adjuster of first party  
7 insurance claims for losses or damages arising out of policies of insurance that  
8 insure real or personal property; or

9           c. Directly or indirectly solicits business, investigates or adjusts  
10 losses or advises an insured about 1st-party claims for losses or damages arising  
11 out of policies of insurance that insure real or personal property for another person  
12 engaged in the business of adjusting losses or damages covered by an insurance  
13 policy.

14           (5) "Commissioner" means the Banking and Insurance Commissioner.  
15 (11GCA Chapter 103: §103102)

16           (6) "Commission" means the Office of Commissioner Of Insurance and  
17 Banking (11GCA Chapter 103).

18 **§15901. License requirement.**

19           (a) No person shall, directly or indirectly, act as a adjuster without first  
20 procuring a license from the Commissioner to act as a insurance adjuster.

21           (b) The Commissioner shall issue a license to an applicant for a adjuster's  
22 license who:

1 (1) Has paid the applicable fee, which shall be the same as that for an  
2 adjuster's license;

3 (2) Passes a written examination for which a fee may be charged, in  
4 accordance with regulations issued pursuant to this Chapter; and

5 (3) Has sufficient experience, training, and instruction concerning the  
6 adjusting of first party claims for damages or losses under insurance contracts that  
7 insure the real or personal property of the insured, as determined by the  
8 Commissioner in accordance with regulations issued pursuant to this Chapter.

9 (c) The Commissioner may issue a license to any applicant without an  
10 examination if:

11 (1) The applicant holds a like license in good standing from another state  
12 and the public official having supervision of insurance adjusters in the other state  
13 certifies that the applicant has passed a written examination; and

14 (2) The other state recognizes insurance adjusters with insurance adjuster  
15 licenses issued by the Government of Guam for the purpose of licensing the  
16 applicant without the requirement of an examination.

17 (d) A license issued pursuant to this section shall continue in force provided the  
18 licensee has completed continuing education requirements as established for  
19 adjusters and paid renewal fees as established for adjusters under this title, unless  
20 suspended, revoked or otherwise terminated prior thereto. Requests for renewal of  
21 the license shall be made to the Commissioner and accompanied by the license fee  
22 of Fifty Dollars (\$50.00).

23 **§15902. Bond requirement.**

1 (a) At the time of the application for license as a adjuster, the applicant shall file  
2 with the Commissioner a bond executed and issued by a surety insurer authorized  
3 to transact business on Guam in the amount of Twenty Thousand Dollars  
4 (\$20,000), which bond shall serve the faithful performance of his or her duties as a  
5 insurance adjuster. A adjuster license shall automatically terminate when the bond  
6 is not in force.

7 (b) The bond shall have the following characteristics:

8 (1) The bond shall be in favor of the Government of Guam and shall  
9 specifically authorize recovery by the Commissioner of the damages sustained if  
10 the licensee is convicted of fraud or unfair practices in connection with his or her  
11 business as a adjuster.

12 (2) The aggregate liability of the surety for all damages shall not exceed  
13 the amount of the bond.

14 (3) The bond shall not be terminated unless at least Thirty (30) days  
15 written notice is given to the licensee and filed with the Commissioner.

16 **§15903. Ownership of other entities.**

17 (a) An applicant for a adjuster's license shall disclose to the Commissioner the  
18 full name and residence of each person who directly or indirectly owns or controls  
19 the licensee, or holds with power to vote or holds proxies with the power to vote,  
20 ten percent (10%) or more of the voting securities of the licensee.

21 (b) The Commissioner may deny an application or suspend or revoke the license  
22 of a adjuster if any person who directly or indirectly owns or controls the licensee,  
23 or holds with power to vote or holds proxies with the power to vote, ten percent

1 (10%) or more of the voting securities of the licensee does not meet the  
2 qualifications for licensure under this Chapter.

3 (c) Every applicant for an initial or renewal adjuster's license shall file with the  
4 Commissioner a list of the full names of all employees who are authorized to  
5 negotiate claims settlements.

6 **§15904. Maintenance of records.**

7 (a) A adjuster shall maintain a complete record of each transaction as a  
8 insurance adjuster. The records required by this section shall include at least the:

9 (1) Name of the insured;

10 (2) Date, location and amount of the loss;

11 (3) Copy of the contract between the insurance adjuster and insured;

12 (4) Name of the insurer, amount, expiration date and number of each  
13 policy carried with respect to the loss;

14 (5) Itemized statement of the insured's recoveries; and

15 (6) Itemized statement of all compensation received by the insurance  
16 adjuster, from any source whatsoever, in connection with a particular claim.

17 (b) Records shall be maintained for at least Five (5) years after the termination  
18 of the transaction with an insured and shall be open to examination by the  
19 Commissioner at all times.

20 (c) Records submitted in accordance with this section that contain proprietary  
21 information, identified in writing as such by the insurance adjuster shall be treated  
22 as confidential by the Commissioner

1 **§15905. License denial, suspension, revocation and refusal to renew; civil**  
2 **penalties.**

3 (a) The Commissioner may deny a license to an applicant or suspend, revoke or  
4 refuse to renew a license if the applicant or licensee:

5 (1) Violates the provisions of this Chapter or any standard of conduct  
6 prescribed by the Commissioner in regulations;

7 (2) Makes a material misstatement in the application for the license;

8 (3) Engages in fraudulent or dishonest practices;

9 (4) Demonstrates incompetence or untrustworthiness to act as a insurance  
10 adjuster; or

11 (5) Fails to complete continuing education requirements.

12 (6) Creates any undue delays (longer than five (5) business days) in the  
13 processing of claims without notification in writing to the claimant(s) of the  
14 reason(s) for such delays.

15 (b) Upon a finding by the Commissioner of a violation of subsection (a) of this  
16 section, the Commissioner may impose a civil penalty not to exceed One  
17 Thousand Dollars (\$1,000) for each violation.

18 (c) This Chapter shall not be applied or interpreted to bar a borrower from  
19 bringing an action pursuant to any Guam or federal law for damages, injunctive  
20 relief or any other relief.

21 **§15906. Contracts and solicitation of contracts.**

1 (a) No licensee shall, directly or indirectly, act within Guam as a adjuster  
2 without having first entered into a contract, in writing, on a form approved by the  
3 Commissioner and executed in duplicate by the insurance adjuster and the insured  
4 or a duly authorized representative. One copy of the contract shall be kept on file  
5 by the licensee and be available at all times for inspection without notice by the  
6 Commissioner.

7 (b)(1) An insured who contracts for the services of a adjuster shall have the  
8 right to cancel the contract until midnight on the Third (3<sup>rd</sup>) business day after the  
9 day on which the insured signs the contract. Contracts that do not substantially  
10 conform to the requirements contained in this section shall be void. Cancellation  
11 of the contract shall be effective when mailed if the following conditions are met:

12 a. The cancellation shall be in writing, but need not take a particular  
13 form, and shall be sufficient if it indicates the intent of the person not to go  
14 forward with the representation.

15 b. The right to cancel shall be contained in the approved contract in a  
16 format designated by the Commissioner.

17 (2) The right of rescission contained in this subsection shall be in addition  
18 to, and not in limitation of, any other rights of the insured.

19 (3) In a commercial loss, if a contract is cancelled in accordance with this  
20 subsection, the adjuster shall be entitled to reasonable compensation for actual  
21 services rendered and costs incurred between the time the contract was entered  
22 into and the time it was cancelled.

1 (c) A licensee shall not solicit, or attempt to solicit, a client for employment  
2 during the progress of a loss-producing occurrence, as defined in the client's  
3 insurance contract.

4 (d) A licensee shall not permit an unlicensed employee or agent in the  
5 unlicensed employee's or agent's own name to advertise, engage clients, furnish  
6 reports or present bills to clients, or in any manner whatsoever to conduct business  
7 for which a license is required under this Chapter.

8 (e) A licensee shall not charge the client a fee that exceeds Two and one-half  
9 percent (2.5%) of the first Twenty Five Thousand Dollars (\$25,000) of the total  
10 insurance recovery of the client. A licensee may charge the client a fee of up to  
11 twelve percent (12%) of the amount of the total insurance recovery of the client  
12 that exceeds Twenty Five Thousand Dollars (\$25,000).

13 (f) A licensed adjuster may not prevent or attempt to dissuade an insured from  
14 communicating with an insurer, the insurer's adjuster, an independent adjuster  
15 representing the insurer, an attorney, or any other person regarding the settlement  
16 of the insured's claim.

17

18 **§15907. Adjustments to comply with insurance contract and law.**

19 A insurance adjuster shall adjust or investigate every claim, damage or loss  
20 made or occurring under an insurance contract for which the insurance adjuster  
21 has been employed in accordance with the terms and conditions of the insurance  
22 adjuster's contract with the insured and the applicable laws and regulations of  
23 Guam.

1    **§15908. Prohibited acts.**

2       (a) Notwithstanding any other grounds for disciplinary action provided for in  
3 this Chapter, the Commissioner may deny, revoke, suspend, refuse to renew or  
4 impose a penalty on an applicant or licensee for violation of the prohibited acts set  
5 out in this section.

6       (b) A licensed adjuster is prohibited from:

7           (1) Paying any money or giving anything of value to any person in  
8 consideration of a direct or indirect referral of a client or potential client;

9           (2) Paying any money or giving anything of value to any person in  
10 consideration as an inducement to refer business or clients;

11           (3) Charging, collecting, or receiving any money or anything of value from  
12 any person providing services to an insured, either directly or on behalf of the  
13 adjuster, in connection with the business of adjusting insurance claims, without  
14 the prior written disclosure of the fee or benefit to the insured;

15           (4) Rebating to any client any part of a fee specified in the employment  
16 contract;

17           (5) Splitting the licensed adjuster's fees or paying any money to any person  
18 for services rendered to a client unless such other person is also licensed as a  
19 adjuster;

20           (6) Having any interest directly or indirectly in any home improvement,  
21 restoration, construction, salvage, appraisal, loss mitigation, cleaning or  
22 environmental restoration business that conducts business on Guam;

1 (7) In connection with the licensee's conduct of business as adjuster,  
2 making any misrepresentation of facts or advising any person on any question of  
3 law;

4 (8) Making false statements about any insurance company or its  
5 employees, agents or representatives;

6 (9) Soliciting the employment by a client in connection with any loss  
7 which is the subject of an employment contract involving the client and another  
8 adjuster;

9 (10) Representing both the insurer and the insured; or

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

12 **§15909. Regulations and scope.**

13 (a) The Commissioner shall promulgate rules and regulations as are necessary to  
14 carry out this Chapter.

15 (b) This Chapter shall not apply to:

16 (1) An adjuster for or an agent or employee of an insurer or group of  
17 insurers under common control or ownership that, as a representative of the  
18 insurer or group, adjusts losses or damages under policies issued by the insurer or  
19 group of insurers;

20 (2) An agent or broker that acts as an adjuster without compensation for an  
21 insured for whom the agent or broker is acting as an agent or broker;

22 (3) An attorney at law who does not:

1 a. Regularly act as a insurance adjuster; or

2 b. Represent to the public by sign, advertisement or other written or  
3 oral communication indicating that the attorney at law acts as a insurance adjuster;  
4 or

5 (4) A licensed health care provider, or employee of a licensed health care  
6 provider, who prepares or files a health insurance claim form on behalf of a  
7 patient;

8 (5) Persons employed only for the purpose of obtaining facts surrounding a  
9 loss or furnishing technical assistance to a licensed adjuster, including but not  
10 limited to photographers, private investigators, engineers and handwriting experts;

11 (6) Any agent or other person who negotiates and/or settles claims arising  
12 under life and health insurance policies;

13 (7) A person who performs clerical duties for or as an employee of an  
14 insurance company, but who does not participate in negotiations with parties on  
15 disputed and/or contested claims; or

16 (8) Any person who settles subrogation claims between authorized  
17 insurers.

18 **§15910. Compensation of Adjuster.**

19 It is unlawful for an insurer to pay any representative who is given discretion as  
20 to the settlement or adjustment of claims under any insurance, whether in direct  
21 negotiations or in supervision of the person negotiating, which in any way is  
22 contingent upon the amount of settlement of each claim, except that this section  
23 shall not apply to marine insurance.

1    **§15911. Immunity.**

2       There shall be no liability on the part of and no cause of action shall arise  
3 against, the Commissioner or the Commission or its employees for any action  
4 taken by them in the performance of their powers and duties under this Chapter

5    **§15912. Severability clause.**

6       If any provision of this Chapter, or its application to any person or  
7 circumstance, is held invalid, that determination shall not affect the provisions or  
8 applications of this Chapter that can be given effect without the invalid provision  
9 or application, and to that end the provisions of this Chapter are severable.

10

11    **Section 2. Repealer.** §§ 15709 and 15710 are hereby repealed. The Compiler of  
12 Laws shall change all references to said Sections, supra, to “22GCA: Chapter 15:  
13 Article 9”.

14

15    **Section 3. Provisions for Existing Licensees.** All persons holding a valid  
16 insurance adjuster’s license as of the effective date of this Act may continue to  
17 renew their licenses for up to three years from the effective date of this Act  
18 without complying with the licensing requirements prescribed herein. After three  
19 years, all insurance adjusters must comply with the requirements herein including  
20 the passage of the licensing examination and bonding requirements.

21

22    **Section 4. Effective Date.** This Act shall be upon enactment.

23