§ 2108. Adjusters; licensing and duties. (a) (1) Adjusters shall be licensed as independent adjusters or as public adjusters.

(2) The superintendent may prescribe the types of independent adjusters' licenses according to the kind or kinds of insurance claims which the licensee is to be authorized to investigate and adjust.

(3) No adjuster shall act on behalf of an insurer unless licensed as an independent adjuster, and no adjuster shall act on behalf of an insured unless licensed as a public adjuster.

(4) No insurer, agent or other representative of an insurer shall pay any fees or other compensation to any person, firm, association or corporation for acting as an independent adjuster except to a licensed independent adjuster or to a person excepted from the licensing requirement pursuant to subsection (g) of section two thousand one hundred one of this article.

(b) The holder of a license under this section may act as an adjuster without any other or additional license.

(c) (1) The superintendent may issue an independent adjuster's license or a public adjuster's license to any person, firm, association or corporation, hereinafter designated as licensee, who, or which, is trustworthy and competent to act as an adjuster in such manner as to safeguard the interests of the people of this state and who, or which, has complied with the prerequisites herein prescribed.

(2) A license issued to a corporation may name as sub-licensees only the officers and directors of such corporation, and a license issued to a firm or association may name as sub-licensees only the individual members of such firm or association. Each sub-licensee named as such in the license issued to a firm, association or corporation must be qualified to obtain a license as an independent adjuster or as a public adjuster, as the case may be, and for each such sub-licensee a fee must be paid at the times and at the rate hereinafter specified. Each such sub-licensee shall be authorized, pursuant to such license, to act as an independent adjuster or as a public adjuster, as the case may be, only on behalf of the licensee.

(3) Every individual applicant for a license under this section and every proposed sub-licensee shall be eighteen years of age or over at the time of the issuance of such license.

(d) (1) Before any such license or any renewal thereof shall be issued

by the superintendent there shall be filed in his office a written application therefor. Such application shall be in the form or forms and supplements and contain information the superintendent prescribes.

(2) Each person or individual signing such application shall, with such application, submit to the superintendent fingerprints of his two hands recorded in such manner as may be specified by the superintendent or his authorized representative. Before approving such application it shall be the duty of the superintendent or his authorized representative to compare such fingerprints with fingerprints filed with the division of criminal justice services. Such fingerprints may also be submitted to the federal bureau of investigation for a national criminal history record check.

(3) Except in the case of an application for a license to act as an independent adjuster, such application shall be approved, as to each person or individual so signing the same, by not less than five reputable citizens of the community in which such applicant resides or transacts business, each of whom shall certify that he or she has personally known the person or individual for a period of at least five years prior to the filing of such application, that he or she has read such application and believes each of the statements made therein to be true, that such person is honest, of good character and competent, and not related or connected to the person so certifying by blood or marriage. The certificate of approval shall be subscribed by such reputable citizens and affirmed by them as true under the penalties of perjury.

(e) (1) The superintendent shall, in order to determine the trustworthiness and competency to act as a public adjuster of each individual applicant for such license, and of each proposed sub-licensee, except in the case of a renewal license, require every such individual to take and pass, to the satisfaction of the superintendent, a personal written examination. No individual shall be deemed qualified to take the examination without having demonstrated by evidence satisfactory to the superintendent that (A) the applicant possesses a minimum of one year experience in the insurance business, with involvement in sales, underwriting or claims or other experience considered sufficient by the superintendent, or (B) the applicant successfully completed forty hours of formal training in a course,

program of instruction or seminars approved by the superintendent.

(2) The superintendent may, in his discretion and on such terms as he prescribes, dispense with such examination in the case of any individual applicant or proposed sub-licensee who shall previously have held a public adjuster's license issued subsequent to January first, nineteen hundred thirty-six.

(f) (1) The superintendent shall, in order to determine the trustworthiness and competency to act as an independent adjuster of each individual applicant for such license, and of each proposed sub-licensee, except in the case of a renewal license, require every such individual to take and pass, to the satisfaction of the superintendent, a personal written examination. The superintendent may prescribe the types of written examinations according to the kind or kinds of insurance claims which the applicant is to be licensed to investigate and adjust.

(2) Any person who at any time served with the armed forces of the United States, and who immediately prior to entering such military service had been continuously engaged in bona fide operation in this state as an independent adjuster for a period of five years, may within one year after the termination of such military service file with the superintendent an application in such form as he prescribes, and upon the payment of the requisite license fee may be licensed by the superintendent as an independent adjuster without being required to take and pass such examination.

(3) The superintendent may also, in the superintendent's discretion and on such terms the superintendent prescribes, dispense with such examination in the case of any individual applicant or proposed sub-licensee who shall previously have held an independent adjuster's license provided the applicant applies within two years following the date of termination of such license.

(g) The superintendent may, in his discretion require an applicant for a license under this section to present evidence, in such form as he prescribes, that such applicant has been employed, for a period which he deems reasonable, by an insurer, an independent adjuster or a public adjuster, in the performance of duties which in his opinion would provide the applicant with a satisfactory preliminary training for the duties and responsibilities which would devolve upon him as a licensee

under this section.

(h) (1) Any person who has had at least five years experience in adjusting claims as an employee of an authorized insurer and has made application for a license as an independent adjuster, or any person holding a valid estimator's license issued by the commissioner of motor vehicles and has made application for a license as an independent adjuster within ninety days of the expiration of the estimator's license, may file with the superintendent, in such form as the superintendent prescribes, a written application for a temporary permit to adjust claims, during the pendency of the application for a license as an independent adjuster, as:

(i) an employee of a licensed independent adjuster; or

(ii) in the case of an auto body repair estimator, an employee of an authorized insurer or any adjustment bureau or association owned and maintained by insurers to adjust or investigate motor vehicle body damage losses.

(2) Notwithstanding the requirement of subsection (f) of this section that each individual applicant for an independent adjuster's license or sub-license shall take and pass a personal written examination in order to satisfy the superintendent as to trustworthiness and competency, the superintendent may in the superintendent's discretion, if satisfied that the person applying for such temporary permit has in all other respects met the requirements of this section with respect to the licensing of independent adjusters and is qualified by training and experience to adjust claims as an employee of a licensed independent adjuster, authorized insurer, or any adjustment bureau or association owned and maintained by insurers to adjust or investigate motor vehicle body damage losses, issue such temporary permit to be effective for such period of time as the superintendent may specify therein but, in no event, for a period in excess of one hundred twenty days. The superintendent may summarily suspend or revoke any temporary permit issued pursuant to this subsection upon ten days' notice in writing to the permittee of the superintendent's intention to do so, which notice shall be given in accordance with the applicable provisions of subsections (a) and (d) of section three hundred four of the financial services law.

(i) (1) At the time of application for every adjuster's license and

for every renewal thereof, there shall be paid to the superintendent by each individual applicant and by each proposed sub-licensee a fee of fifty dollars for each year or fraction of a year in which a license shall be valid; except that amounts paid to the commissioner of motor vehicles pursuant to subdivision five of section three hundred ninety-eight-d of the vehicle and traffic law, by any person who held an auto body repair estimator license prior to January first, nineteen hundred ninety-six shall be considered by the superintendent.

(2) No license fee shall be required of any person who served as a member of the armed forces of the United States at any time and who (A) shall have been discharged, under conditions other than dishonorable, or (B) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or (C) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, in a current licensing period, for the duration of such period.

(3) A license fee of fifty dollars for each year or fraction of a year in which a license shall be valid for an independent adjuster's license shall cover any one or more of the various types of independent adjusters' licenses issued by the department.

(4) Every individual applying to take any written examination shall at the time of applying therefor pay to the superintendent, or at the discretion of the superintendent, directly to any organization that is under contract to provide examination services, an examination fee of an amount which is the actual documented administrative cost of conducting said qualifying examination as certified by the superintendent from time to time. An examination fee represents an administrative expense and is not refundable. If, however, the applicant or a proposed sub-licensee should withdraw his or its application or the superintendent should deny his or its application before the license applied for is issued, the superintendent may refund the fee paid by the applicant for the license applied for, excepting any examination fees required pursuant to this subsection.

(j) (1) Every adjuster's license issued pursuant to this section shall be for a term expiring on the thirty-first day of December of even

numbered years, and may be renewed for the ensuing two calendar years upon the filing of an application in conformity with subsection (d) hereof. In the case of a license issued to a new applicant, the superintendent may issue a license for a term of more than two years, provided however, such term shall not exceed thirty months.

(2) If an application for a renewal license shall have been filed with the superintendent by December thirty-first of the year of expiration, the license sought to be renewed shall continue in full force and effect either until the issuance by the superintendent of the renewal license applied for or until five days after the superintendent shall have refused to issue such renewal license and shall have given notice of such refusal to the applicant and to all proposed sub-licensees named in such application.

(3) If such refusal is based on any grounds other than failure to pass a written examination and if the applicant or any proposed sub-licensee shall within thirty days after such notice is given notify the superintendent of his or its request for a hearing on such refusal, the superintendent shall within a reasonable time after receipt of such notice grant such a hearing, and he may, in his discretion, reinstate such license.

(k) Any firm, association or corporation licensed as an adjuster under this section may at any time make an application to the superintendent for the issuance of a supplemental license authorizing additional officers or directors of such corporation or additional members of such firm or association, as the case may be, to act as sub-licensees, and, if the requirements of this section are fully complied with as to each of such proposed sub-licensees, the superintendent may thereupon issue to such licensee a supplemental license naming such additional person, or persons, as sub-licensees.

(l) (1) No adjuster's license or renewal license, other than an independent adjuster's license, shall be issued to any applicant unless there shall be on file with the superintendent of financial services a bond, executed by such applicant and by approved sureties, in the penal sum of one thousand dollars conditioned on the faithful performance by such licensee and by all sub-licensees named in such license, of their duties as such adjusters.

(2) Such bond shall be approved as to form by the attorney general and

as to sufficiency of security by the superintendent.

(3) Such bond shall be made to the state of New York and shall specifically authorize recovery by the state of the penal sum provided therein in case the adjuster or any sub-licensee shall have been guilty of fraudulent or dishonest practices in connection with the transaction of his or its business as such adjuster or shall have been convicted under any of the sections contained in article one hundred fifty of the penal law.

(m) If an application for a license under this section be rejected by the superintendent, he shall forthwith give notice to the applicant, or to the licensee, as the case may be.

(n) Notwithstanding the provisions of this section, the superintendent, in order to facilitate the settlement of claims under insurance contracts involving widespread property losses arising out of a conflagration or catastrophe common to all such losses, may issue a temporary permit for a term not exceeding one hundred twenty days to any person, whether he be a resident of this state or a non-resident, to act as an independent adjuster on behalf of an authorized insurer or insurers, provided any such insurer shall execute and file in the office of the superintendent a written application for the permit in the form prescribed by the superintendent, which application shall contain such information as he may require and shall certify that the person named therein to be designated in the temporary permit is qualified by experience and training to adjust claims arising under insurance contracts issued by any insurer. The superintendent may in his discretion renew such permit for an additional term or terms as may be necessary to adjust such claims.

(o) No licensee shall in connection with the transaction of his business as an adjuster make any misrepresentation of facts or advise any person on questions of law.

(p) No adjuster shall have any right to compensation from any insured for or on account of services rendered to such insured as a public adjuster unless such right to compensation is based upon a written memorandum, signed by the party to be charged, and specifying or clearly defining the amount or extent of such compensation. The superintendent shall establish and prescribe regulations:

(1) to provide for a standard form and terms of said written

memorandum for compensation, including the maximum amount to be charged;

(2) to provide for compliance with article ten-A of the personal property law relating to door to door sales; however, for the purpose of this section, "door to door sale" in addition to the definition thereof contained in subdivision one of section four hundred twenty-six of the personal property law, shall include any contract entered into by a public adjuster to adjust losses;

(3) to provide for maintenance of appropriate books and records to be maintained by public adjusters which shall be kept subject to inspection and examination by the superintendent; and

(4) to provide for such other regulations that are deemed necessary by the superintendent for the proper and adequate supervision of public adjusters.

(q) The superintendent may issue a replacement for a currently in force license which has been lost or destroyed. Before such replacement license shall be issued, there shall be on file in the office of the superintendent a written application for such replacement license, affirming under penalty of perjury that the original license has been lost or destroyed, together with a fee of fifteen dollars.

(r) (1) The following continuing education requirements shall apply to resident and non-resident persons licensed as public adjusters.

(2) Resident and non-resident persons licensed as public adjusters and any person previously so licensed whose license was not in effect on the effective date of this subsection and who has subsequently been relicensed pursuant to the provisions of this article, shall biennially satisfactorily complete such courses or programs as may be approved by the superintendent, as follows:

(A) Any person holding a license as a public adjuster shall, during each full biennial licensing period, satisfactorily complete courses or programs of instruction or attend seminars as may be approved by the superintendent equivalent to fifteen credit hours of instruction.

(B) During the same calendar year biennial licensing period, a licensee may use accumulated continuing education credits to meet the requirements of similar classes of licenses including those authorized by subsection (b) of section two thousand one hundred three, section two thousand one hundred four, section two thousand one hundred seven of this article with respect to general insurance consultants, and section

two thousand one hundred eight of this article with respect to public adjusters.

(C) Excess credit hours accumulated during any biennial licensing period shall not carry forward to the next biennial licensing period for that same class of license.

(3) (A) The courses or programs of instruction successfully completed, which shall be deemed to meet the superintendent's standards for continuing education shall be:

(i) Courses, programs of instruction or seminars, approved as to method and content by the superintendent, covering portions of the principal branches of insurance related to the kinds of insurance covered by the public adjusting license, and given by a degree conferring college or university whose curriculum is registered with the state education department at the time the person takes the course, whether such course be given as part of such curriculum or separately, or by any other institution, association, trade association or insurer, which maintains equivalent standards of instruction and which shall have been approved for such purpose by the superintendent.

(ii) Continuing education as required by the state in which a non-resident licensee resides and maintains an office, provided the superintendent deems them equivalent to New York continuing education requirements. If the state in which the non-resident licensee resides and maintains an office has no continuing education requirements, or the superintendent does not deem them equivalent, the licensee must satisfy New York continuing education requirements.

(B) The number of credit hours assigned to each of the courses or programs of instruction set forth in paragraph one of this subsection shall be determined by the superintendent.

(4) A person who teaches any approved course of instruction or who lectures at any approved seminar, and who is subject to these continuing education requirements shall be granted the same number of credit hours as would be granted to a person taking and successfully completing such course, seminar or program, provided that such credit hours shall be credited only once per approved course during any biennial licensing period.

(5) Every person subject to these continuing education requirements shall furnish, in a form satisfactory to the superintendent, written

certification attesting to the course or programs of instruction taken and successfully completed by such person, and executed by the sponsoring organization or its authorizing representative.

(6) (A) Any person failing to meet applicable continuing education requirements shall not be eligible to renew the license.

(B) Any person whose license was not renewed shall not be eligible to become relicensed during the next biennial licensing period until that person has demonstrated to the satisfaction of the superintendent that continuing education requirements for the last biennial licensing period were met.

(C) Any person whose license was not renewed pursuant to subparagraph (A) of this paragraph, who accumulates sufficient credit hours for the prior licensing period to qualify for relicensing in the biennial period following such non-renewal, may not apply those same credit hours toward the continuing education requirements for the current biennial licensing period.

(7) (A) Any entity eligible to provide continuing education courses, programs of instruction, or seminars shall file for approval by the superintendent on a biennial basis, to conform with its areas of instruction, a provider organization application and a course submission application for each course, program, and seminar.

(B) The provider organization application shall include the names of all instructors to be used during the contract period, and instructors may be added during the period by notifying the superintendent and paying the appropriate filing fee.

(C) The completed applications shall be returned in a timely manner, as specified by the superintendent with a non-refundable filing fee of two hundred dollars per organization, fifty dollars per course, program, and seminar, and fifty dollars per instructor.

(D) Approval of the application shall be at the discretion of the superintendent.

(8) Each licensee shall pay a biennial fee of ten dollars per license, for continuing education certificate filing and recording charges, to the superintendent, or, at the direction of the superintendent, directly to an organization under contract to provide continuing education administrative services.

(s) (1) Every public adjuster shall have an affirmative duty to act on

behalf and in the best interests of the insured when negotiating for or effecting the settlement of an insurance claim for the insured or otherwise acting as a public adjuster.

(2) (A) No public adjuster shall receive any compensation, either directly or indirectly, for a referral of the insured to an individual or entity for services, work or repairs, relating to any insurance claim for which the public adjuster represents the insured or has negotiated or effected a settlement, unless the compensation is prominently and clearly disclosed to the insured in the written memorandum described in subsection (p) of this section. Any such compensation received shall be deemed to be compensation from the insured and, in combination with any other compensation received from the insured, shall not exceed the maximum amount that the adjuster may charge in accordance with the regulations required pursuant to subsection (p) of this section.

(B) No public adjuster who has a financial or ownership interest in the individual or entity that performs the services, work, or repairs, shall refer the insured to the individual or entity unless the financial or ownership interest is prominently and clearly disclosed to the insured in the written memorandum described in subsection (p) of this section. If a public adjuster refers an insured to an individual who is related to the individual by blood or affinity to the second degree of consanguinity, or to an entity owned or controlled by such an individual, for services, work, or repairs, relating to any insurance claim for which the public adjuster represents the insured or has negotiated or effected a settlement, then the public adjuster shall disclose the relationship to the insured in the written memorandum described in subsection (p) of this section.