

By: Smithee

H.B. No. 4030

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the licensing and regulation of insurance
3 professionals.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 443.156(a), Insurance Code, is amended
6 to read as follows:

7 (a) Every person who represented the insurer as an agent and
8 receives notice in the form prescribed in Section 443.155 that the
9 insurer is the subject of a liquidation order, not later than the
10 30th day after the date of the notice, shall provide to the
11 liquidator, in addition to the information the agent may be
12 required to provide pursuant to Section 443.010, the information in
13 the agent's records related to any policy issued by the insurer
14 through the agent and any policy issued by the insurer through an
15 agent under contract to the agent, including the name and address of
16 any individual who acted for or on behalf of the agent [~~subagent~~].
17 For purposes of this subsection, a policy is issued through an agent
18 if the agent has a property interest in the expiration of the policy
19 or if the agent has had in the agent's possession a copy of the
20 declarations of the policy at any time during the life of the
21 policy, except where the ownership of the expiration of the policy
22 has been transferred to another.

23 SECTION 2. Section 521.151, Insurance Code, is amended to
24 read as follows:

1 Sec. 521.151. APPLICABILITY OF SUBCHAPTER. This subchapter
2 applies to any legal entity engaged in the business of insurance in
3 this state, including:

- 4 (1) a capital stock insurance company;
- 5 (2) a mutual insurance company;
- 6 (3) a title insurance company;
- 7 (4) a fraternal benefit society;
- 8 (5) a local mutual aid association;
- 9 (6) a statewide mutual assessment company;
- 10 (7) a county mutual insurance company;
- 11 (8) a Lloyd's plan;
- 12 (9) a reciprocal or interinsurance exchange;
- 13 (10) a stipulated premium company;
- 14 (11) a group hospital service corporation;
- 15 (12) a farm mutual insurance company;
- 16 (13) a risk retention group;
- 17 (14) an eligible surplus lines insurer; and
- 18 (15) an agent, broker, or adjuster [~~, or life and~~
19 ~~health insurance counselor~~].

20 SECTION 3. Section 541.002(2), Insurance Code, is amended
21 to read as follows:

- 22 (2) "Person" means an individual, corporation,
23 association, partnership, reciprocal or interinsurance exchange,
24 Lloyd's plan, fraternal benefit society, or other legal entity
25 engaged in the business of insurance, including an agent, broker,
26 or adjuster [~~, or life and health insurance counselor~~].

27 SECTION 4. Section 544.001, Insurance Code, is amended to

1 read as follows:

2 Sec. 544.001. APPLICABILITY OF SUBCHAPTER. This subchapter
3 applies to:

4 (1) any legal entity engaged in the business of
5 insurance in this state, including:

- 6 (A) a capital stock insurance company;
- 7 (B) a mutual insurance company;
- 8 (C) a title insurance company;
- 9 (D) a fraternal benefit society;
- 10 (E) a local mutual aid association;
- 11 (F) a statewide mutual assessment company;
- 12 (G) a county mutual insurance company;
- 13 (H) a Lloyd's plan;
- 14 (I) a reciprocal or interinsurance exchange;
- 15 (J) a stipulated premium company;
- 16 (K) a group hospital service corporation;
- 17 (L) a farm mutual insurance company;
- 18 (M) a risk retention group;
- 19 (N) an eligible surplus lines insurer; and
- 20 (O) an agent, broker, or adjuster [~~, or life and~~
21 ~~health insurance counselor~~]; and

22 (2) a health maintenance organization.

23 SECTION 5. Section 544.051, Insurance Code, is amended to
24 read as follows:

25 Sec. 544.051. APPLICABILITY OF SUBCHAPTER. This subchapter
26 applies to any individual, corporation, association, partnership,
27 or other legal entity engaged in the business of insurance,

1 including:

- 2 (1) a fraternal benefit society;
- 3 (2) a county mutual insurance company;
- 4 (3) a Lloyd's plan;
- 5 (4) a reciprocal or interinsurance exchange;
- 6 (5) a farm mutual insurance company; and
- 7 (6) an agent, broker, or adjuster [~~or life and health~~
8 ~~insurance counselor~~].

9 SECTION 6. Section 1131.056(a), Insurance Code, is amended
10 to read as follows:

11 (a) In this section, "agent" includes a general agent [~~or~~
12 ~~subagent~~] or a salesperson.

13 SECTION 7. Section 4001.002(b), Insurance Code, is amended
14 to read as follows:

15 (b) This title does not apply to:

16 (1) a resident of this state who arbitrates in the
17 adjustment of losses between an insurer and an insured, a marine
18 adjuster who adjusts particular or general average losses of
19 vessels or cargoes if the adjuster paid an occupation tax of \$200
20 for the year in which the adjustment is made, or a practicing
21 attorney at law in this state, acting in the regular transaction of
22 the person's business as an attorney at law, who is not a local
23 agent and is not acting as an adjuster for an insurer;

24 (2) [~~a full-time home office salaried employee of an~~
25 ~~insurer authorized to engage in the business of insurance in this~~
26 ~~state, other than an employee who solicits or receives an~~
27 ~~application for the sale of insurance through an oral, written, or~~

1 ~~electronic communication in accordance with Subchapter C, Chapter~~
2 ~~4051,~~

3 ~~(3)~~ an attorney in fact or the traveling salaried
4 representative of a reciprocal or interinsurance exchange admitted
5 to engage in the business of insurance in this state as to business
6 transacted through the attorney in fact or salaried representative;

7 (3) ~~(4)~~ the attorney in fact for a Lloyd's plan;

8 (4) ~~(5)~~ the group motor vehicle insurance business
9 or the group motor vehicle department of a company engaged in that
10 business; or

11 (5) ~~(6)~~ a salaried employee who is not involved in
12 soliciting or negotiating insurance in the office of an agent and
13 who devotes the employee's full time to clerical and administrative
14 services, including the incidental taking of information from
15 customers and receipt of premiums in the office of an agent, if:

16 (A) the employee does not receive any
17 commissions; and

18 (B) the employee's compensation is not varied by
19 the volume of premiums taken and received.

20 SECTION 8. Section 4001.003(1), Insurance Code, is amended
21 to read as follows:

22 (1) "Agent" means a person who is an authorized agent
23 of an insurer or health maintenance organization [~~a subagent,~~]
24 and any other person who performs the acts of an agent, whether
25 through an oral, written, electronic, or other form of
26 communication, by soliciting, negotiating, procuring, or
27 collecting a premium on an insurance or annuity contract, or who

1 represents or purports to represent a health maintenance
2 organization, including a health maintenance organization offering
3 only a single health care service plan, in soliciting, negotiating,
4 procuring, or effectuating membership in the health maintenance
5 organization. The term does not include:

6 (A) a regular salaried officer or employee of an
7 insurer, health maintenance organization, or agent who:

8 (i) devotes substantially all of the
9 officer's or employee's time to activities other than the
10 solicitation of applications for insurance, annuity contracts, or
11 memberships;

12 (ii) does not receive a commission or other
13 compensation directly dependent on the business obtained; and

14 (iii) does not solicit or accept from the
15 public applications for insurance, annuity contracts, or
16 memberships;

17 (B) an employer or an employer's officer or
18 employee or a trustee of an employee benefit plan, to the extent
19 that the employer, officer, employee, or trustee is engaged in the
20 administration or operation of an employee benefits program
21 involving the use of insurance or annuities issued by an insurer or
22 memberships issued by a health maintenance organization, if the
23 employer, officer, employee, or trustee is not directly or
24 indirectly compensated by the insurer or health maintenance
25 organization issuing the insurance or annuity contracts or
26 memberships;

27 (C) except as otherwise provided by this code, a

1 depository institution, or an officer or employee of a depository
2 institution, to the extent that the depository institution or
3 officer or employee collects and remits premiums or charges by
4 charging those premiums or charges against accounts of depositors
5 on the orders of those depositors; or

6 (D) a person or the employee of a person who has
7 contracted to provide administrative, management, or health care
8 services to a health maintenance organization and who is
9 compensated for those services by the payment of an amount computed
10 as a percentage of the revenues, net income, or profit of the health
11 maintenance organization, if that method of compensation is the
12 sole basis for subjecting that person or the employee of the person
13 to this title.

14 SECTION 9. Section 4001.051(b), Insurance Code, is amended
15 to read as follows:

16 (b) Regardless of whether the act is done at the request of
17 or by the employment of an insurer, broker, or other person, a
18 person is the agent of the insurer for which the act is done or risk
19 is taken for purposes of the liabilities, duties, requirements, and
20 penalties provided by this title or [7] Chapter 21[~~7 or a provision~~
21 ~~listed in Section 4001.009~~] if the person:

22 (1) solicits insurance on behalf of the insurer;

23 (2) receives or transmits other than on the person's
24 own behalf an application for insurance or an insurance policy to or
25 from the insurer;

26 (3) advertises or otherwise gives notice that the
27 person will receive or transmit an application for insurance or an

1 insurance policy;

2 (4) receives or transmits an insurance policy of the
3 insurer;

4 (5) examines or inspects a risk;

5 (6) receives, collects, or transmits an insurance
6 premium;

7 (7) makes or forwards a diagram of a building;

8 (8) takes any other action in the making or
9 consummation of an insurance contract for or with the insurer other
10 than on the person's own behalf; or

11 (9) examines into, adjusts, or aids in adjusting a
12 loss for or on behalf of the insurer.

13 SECTION 10. Section [4001.106\(b\)](#), Insurance Code, is amended
14 to read as follows:

15 (b) The department shall issue a license to a corporation or
16 partnership if the department determines that:

17 (1) the corporation or partnership is:

18 (A) organized under the laws of this state or
19 another state; and

20 (B) authorized by its articles of incorporation
21 or its partnership agreement to act as an agent;

22 (2) at least one officer of the corporation or one
23 active partner of the partnership and all other persons performing
24 any acts of an agent on behalf of the corporation or partnership in
25 this state are individually licensed by the department separately
26 from the corporation or partnership;

27 (3) the corporation or partnership will have the

1 ability to pay any amount up to \$25,000 that it might become legally
2 obligated to pay under a claim made against it by a customer and
3 caused by a negligent act, error, or omission of the corporation or
4 partnership or a person for whose acts the corporation or
5 partnership is legally liable in the conduct of its business under
6 this code;

7 (4) if engaged in the business of insurance, the
8 corporation or partnership intends to be actively engaged in that
9 business as required under Section 4001.104(a);

10 (5) ~~[each location from which the corporation or~~
11 ~~partnership will engage in business in this state under authority~~
12 ~~of a license issued by the department is registered separately with~~
13 ~~the department;~~

14 ~~[(6)]~~ the corporation or partnership has submitted the
15 application, appropriate fees, and any other information required
16 by the department; and

17 (6) ~~[(7)]~~ an officer, director, member, manager,
18 partner, or other person who has the right or ability to control the
19 corporation or partnership has not:

20 (A) had a license suspended or revoked or been
21 the subject of any other disciplinary action by a financial or
22 insurance regulator of this state, another state, or the United
23 States; or

24 (B) committed an act for which a license may be
25 denied under Subchapter C, Chapter 4005.

26 SECTION 11. Section 4001.153, Insurance Code, is amended to
27 read as follows:

1 Sec. 4001.153. APPLICATION FOR AND ISSUANCE OF TEMPORARY
2 LICENSE. (a) Except as provided by Subsection (b), the [The]
3 department shall issue a temporary license immediately on receipt
4 of a properly completed application executed by the applicant in
5 the form required by Section 4001.102 and accompanied by:

6 (1) the nonrefundable filing fee set by the
7 department; and

8 (2) a certificate signed by an officer or properly
9 authorized representative of an agent, insurer, or health
10 maintenance organization stating that:

11 (A) the applicant is being considered for
12 appointment by the agent, insurer, or health maintenance
13 organization as its full-time agent;

14 (B) the agent, insurer, or health maintenance
15 organization desires that the applicant be issued a temporary
16 license; and

17 (C) the applicant will complete training as
18 prescribed by Section 4001.160 under the agent's, insurer's, or
19 health maintenance organization's supervision.

20 (b) The department may deny a license application under this
21 subchapter if the department determines that any of the grounds
22 exist for license denial or disciplinary action under Section
23 4005.101 of this code or Chapter 53, Occupations Code.

24 SECTION 12. Section 4001.155, Insurance Code, is amended to
25 read as follows:

26 Sec. 4001.155. TERM OF TEMPORARY LICENSE. A temporary
27 license is valid for 180 [~~90~~] days after the date of issuance.

1 SECTION 13. Section 4001.352, Insurance Code, is amended to
2 read as follows:

3 Sec. 4001.352. AUTHORITY TO ISSUE PROVISIONAL PERMIT.

4 (a) The department may, in conjunction with a license application
5 under Section 4001.102, issue a provisional permit to an applicant
6 who is being considered for appointment as an agent by another
7 agent, an insurer, or a health maintenance organization.

8 (b) The department may not issue a provisional permit under
9 this subchapter unless the department's average license processing
10 time exceeds 30 days.

11 SECTION 14. Section 4002.003(a), Insurance Code, is amended
12 to read as follows:

13 (a) The department may not require a person to take an
14 examination under this chapter if the person is:

15 (1) an applicant for the renewal of an unexpired
16 license issued by the department;

17 (2) an applicant whose license issued by the
18 department expired less than one year before the date of the
19 application, if the previous license was not denied, revoked, or
20 suspended by the commissioner;

21 (3) a partnership, corporation, or depository
22 institution;

23 (4) an applicant for a life, accident, and health
24 license who is designated as a chartered life underwriter (CLU);

25 ~~(5) [an applicant for a life and health insurance~~
26 ~~counselor license who is designated as a chartered life underwriter~~
27 ~~(CLU), chartered financial consultant (ChFC), or certified~~

1 ~~financial planner (CFP);~~

2 ~~[(6)]~~ an applicant for a property and casualty license
3 who is designated as a chartered property casualty underwriter
4 (CPCU);

5 (6) ~~[(7)]~~ an applicant for a specialty license issued
6 under Chapter 4055;

7 (7) ~~[(8)]~~ a nonresident individual who is exempt from
8 the examination requirement under Chapter 4056; or

9 (8) ~~[(9)]~~ an applicant for a general life, accident,
10 and health license or a life agent license who was authorized to
11 solicit or procure insurance on behalf of a fraternal benefit
12 society on September 1, 1999, if the applicant:

13 (A) solicited or procured insurance on behalf of
14 the fraternal benefit society for at least 24 months preceding
15 September 1, 1999; and

16 (B) does not, on or after September 1, 1999,
17 solicit or procure:

18 (i) insurance for any other insurer or a
19 different fraternal benefit society;

20 (ii) an insurance contract from anyone
21 other than a person who is eligible for membership in the fraternal
22 benefit society; or

23 (iii) an interest-sensitive life insurance
24 contract that exceeds \$35,000 of coverage on an individual life,
25 unless the applicant is designated as a "Fraternal Insurance
26 Counselor" at the time the contract is solicited or procured.

27 SECTION 15. Section 4004.053(a), Insurance Code, is amended

1 to read as follows:

2 (a) An individual who holds a general life, accident, and
3 health license, a life agent license, [~~a life and health insurance~~
4 ~~counselor license,~~] an adjuster license, a managing general agent
5 license, a general property and casualty license, or a personal
6 lines property and casualty license must complete 24 hours of
7 continuing education during the license period. If the individual
8 holds more than one license for which continuing education is
9 otherwise required, the individual is not required to complete more
10 than 24 continuing education hours for all licenses during the
11 license period. An individual who is required under rules adopted
12 under Chapter 4008 to hold a certificate to sell a designated
13 product or product line may use continuing education programs
14 administered under Section 4004.151 to satisfy the continuing
15 education requirements under this subsection.

16 SECTION 16. Section 4004.054, Insurance Code, is amended to
17 read as follows:

18 Sec. 4004.054. ETHICS REQUIREMENT. Each individual who
19 holds a license issued by the department shall complete three [~~two~~]
20 hours of continuing education in ethics during each license renewal
21 period.

22 SECTION 17. Section 4051.051(a), Insurance Code, is amended
23 to read as follows:

24 (a) A person is required to hold a general property and
25 casualty license if the person acts as:

26 (1) an agent who writes property and casualty
27 insurance for an insurer authorized to engage in the business of

1 property and casualty insurance in this state; or

2 (2) [~~a subagent of a person who holds a license as an~~
3 ~~agent under this chapter who solicits and binds insurance risks for~~
4 ~~that agent; or~~

5 [~~(3)~~] an agent who writes any other kind of insurance
6 as required by the commissioner for the protection of the insurance
7 consumers of this state.

8 SECTION 18. Section 4051.401, Insurance Code, is amended to
9 read as follows:

10 Sec. 4051.401. PERSONAL LINES PROPERTY AND CASUALTY
11 LICENSE; LICENSE REQUIRED. A person is required to hold a personal
12 lines property and casualty license if the person acts as[~~+~~

13 [~~(1)~~] an agent who writes property and casualty
14 insurance sold to individuals and families primarily for personal
15 or household use for an insurer authorized to engage in the business
16 of property and casualty insurance in this state[~~;~~ ~~or~~

17 [~~(2)~~ a subagent of a person who holds a license as an
18 ~~agent under this subchapter who solicits and binds insurance risks~~
19 ~~for that agent].~~

20 SECTION 19. Section 4056.052, Insurance Code, is amended by
21 adding Subsection (c) to read as follows:

22 (c) A license issued under this section shall be
23 automatically suspended, canceled, or revoked if the licensee's
24 home state suspends, cancels, or revokes the licensee's
25 corresponding resident license.

26 SECTION 20. Section 4056.059(b), Insurance Code, is amended
27 to read as follows:

1 (b) A nonresident agent may apply to the department for a
2 comparable license for residents of this state. An application
3 must include:

4 (1) a notification of the agent's change of address and
5 contact information; and

6 (2) [~~a clearance letter from the state authority of~~
7 ~~the state that issued the agent's prior resident license~~
8 ~~demonstrating the agent's good standing with that authority; and~~

9 [~~(3)~~] fingerprint forms in the format prescribed by
10 the department, which may be electronic.

11 SECTION 21. Section 4101.002(b), Insurance Code, is amended
12 to read as follows:

13 (b) A nonresident adjuster who is also an employee of an
14 insurer that is licensed in this state is not required to hold a
15 license under this chapter to:

16 (1) adjust a single loss in this state;

17 (2) adjust losses arising out of a catastrophe common
18 to all those losses; or

19 (3) act as a temporary substitute for a licensed
20 adjuster.

21 SECTION 22. Section 4102.054(a), Insurance Code, is amended
22 to read as follows:

23 (a) The commissioner may issue a nonresident license to an
24 applicant for a public insurance adjuster license who is not a
25 permanent resident of this state on determining that the
26 application meets the requirements of this chapter, the nonresident
27 license application fee has been paid, and the applicant is an

1 individual who:

2 (1) is at least 18 years of age;

3 (2) except as provided by Section 4102.058, has
4 passed, to the satisfaction of the commissioner, an examination
5 approved by the commissioner and of sufficient scope as prescribed
6 by Section 4102.057;

7 (3) is self-employed as a public insurance adjuster or
8 associated with or employed by a public insurance adjusting firm or
9 other public insurance adjuster;

10 (4) is trustworthy and of a moral character that
11 reasonably ensures that the applicant will conduct the business of
12 a public insurance adjuster fairly and in good faith without
13 detriment to the public;

14 (5) has never been convicted of a felony or, if
15 convicted of a felony, has received a full pardon from that
16 conviction and is otherwise relieved from any disabilities
17 connected with that conviction;

18 (6) has sufficient experience or training relating to
19 the assessment of:

20 (A) real and personal property values; and

21 (B) physical loss of or damage to real or
22 personal property that may be the subject of insurance and claims
23 under insurance;

24 (7) is sufficiently informed as to the terms and
25 effects of the types of insurance contracts that provide coverage
26 on real and personal property;

27 (8) possesses knowledge and experience adequate to

1 enable the applicant to engage in the business of a public insurance
2 adjuster fairly and without injury to the public or any member of
3 the public with whom the applicant may have business as a public
4 insurance adjuster;

5 (9) ~~[if currently licensed as a resident public~~
6 ~~insurance adjuster in the applicant's state of residence, provides~~
7 ~~with the application a certificate or letter of authorization from~~
8 ~~the licensing authority of the applicant's state of residence that:~~

9 ~~[(A) states that the applicant holds a current or~~
10 ~~comparable license to act as a public insurance adjuster; and~~

11 ~~[(B) meets the requirements of Subsection (b);~~

12 ~~[(10) if the applicant's state of residence does not~~
13 ~~require licensure as a resident public insurance adjuster and the~~
14 ~~applicant has been licensed as an adjuster, agent, broker, or other~~
15 ~~insurance representative in the applicant's state of residence or~~
16 ~~any other state within the past three years, provides with the~~
17 ~~application a certificate or letter of authorization from the~~
18 ~~licensing authority that:~~

19 ~~[(A) states that the applicant holds or has held~~
20 ~~a license to act as an adjuster, agent, broker, or other insurance~~
21 ~~representative; and~~

22 ~~[(B) meets the requirements of Subsection (c);~~

23 ~~[(11)]~~ files proof of financial responsibility in
24 accordance with Section [4102.105](#); and

25 (10) ~~[(12)]~~ complies with any other requirements
26 under applicable state law, including provision of a complete set
27 of fingerprints on request, as provided by Section [4001.103](#).

1 SECTION 23. Section 4102.104, Insurance Code, is amended by
2 amending Subsection (a) and adding Subsections (a-1) and (a-2) to
3 read as follows:

4 (a) For purposes of this section, "contract" means the
5 contract between the insured and the public insurance adjuster.

6 (a-1) The total commission that a public insurance adjuster
7 may receive includes expenses, direct costs, or any other costs
8 accrued by the public insurance adjuster from the date the insured
9 signed the contract to the date the insured receives final payment
10 on the claim.

11 (a-2) Except as provided by Subsection (b), the ~~[a license~~
12 ~~holder may receive a commission for service provided under this~~
13 ~~chapter consisting of an hourly fee, a flat rate, a percentage of~~
14 ~~the total amount paid by an insurer to resolve a claim, or another~~
15 ~~method of compensation. The]~~ total commission received may not
16 exceed:

17 (1) 10 percent of the total amount paid by the insurer
18 to settle a claim, if the insured signed the contract before the
19 insurer paid or offered to pay any amount to settle the claim; or

20 (2) 10 percent of the amount equal to the total amount
21 paid by the insurer to settle the claim minus the amount of any open
22 offer before the insured signed the contract minus any payments
23 initiated or made before the insured signed the contract, if the
24 insured signed the contract after the insurer paid or offered to pay
25 any amount to settle ~~[insurance settlement on]~~ the claim.

26 SECTION 24. The following provisions of the Insurance Code
27 are repealed:

- 1 (1) Section 4001.003(9);
- 2 (2) Sections 4001.009 and 4001.109;
- 3 (3) Section 4001.156(a);
- 4 (4) Section 4001.205;
- 5 (5) Subchapters D and G, Chapter 4051;
- 6 (6) Chapter 4052;
- 7 (7) Section 4056.004;
- 8 (8) Sections 4102.054(b) and (c); and
- 9 (9) Section 4102.114(d).

10 SECTION 25. (a) In this section, "department" means the
11 Texas Department of Insurance.

12 (b) On the effective date of this Act, the department shall
13 convert all active insurance services representative licenses
14 issued before January 1, 2021, to general property and casualty
15 insurance agent licenses. Licensees must comply with all
16 requirements of the converted license to keep the license active
17 and in good standing. Any insurance services representative
18 licenses issued on or after January 1, 2021, through the effective
19 date of this Act may not be renewed on expiration of the license and
20 may not convert to another license type.

21 (c) On the effective date of this Act, the department shall
22 convert all active life and health insurance counselor licenses
23 issued before January 1, 2021, to general life and health agent
24 licenses. Converted licensees must comply with all requirements of
25 the converted license to keep the license active and in good
26 standing. Any life and health insurance counselor licenses issued
27 on or after January 1, 2021, through the effective date of this Act

1 may not be renewed on expiration of the license and may not convert
2 to another license type.

3 (d) On the effective date of this Act, any existing home
4 office salaried employee registration is void and ceases to exist.
5 Any former home office salaried employee registrant engaging in the
6 business of insurance after the effective date of this Act must
7 follow the requirements of the Insurance Code and any other
8 applicable laws of this state.

9 SECTION 26. This Act takes effect September 1, 2021.