

BILL ANALYSIS

C.S.H.B. 392
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Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current state law, there are no licensing requirements for public adjusters who adjust losses on behalf of an insured claimant. According to the Texas Department of Insurance, the absence of licensing requirements for public adjusters has raised concern among consumers, insurers, and other interested parties and has resulted in improperly adjusted water damage claims. Additionally, fraudulent claims activities associated with unlicensed public adjusters may ultimately contribute to increases in the cost of insurance coverage for all insureds. C.S.H.B. 392 sets forth requirements for licensing public adjusters.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Commissioner of Insurance in SECTION 2 (Art. 21.07-5, Insurance Code) and SECTION 3 of this bill.

ANALYSIS

C.S.H.B. 392 amends the Insurance Code to prohibit an individual from representing oneself as a public insurance adjuster without holding a license issued by the Commissioner of Insurance (Commissioner). The bill provides for an exception and exemptions to this requirement. The bill excludes licensed public insurance adjusters from the definition of adjusters under provisions relating to licensing insurance adjusters. A license includes the authority to adjust claims for allied coverages, burglary, flood, all real and personal property claims, and claims for loss of income. The bill sets forth provisions for voiding contracts that involve unlicensed public adjusters and for the payment of services rendered under such a contract. The bill allows for the gathering of information and evidence by the Texas Department of Insurance (department) and provides for the payment of related expenses. The bill provides that a license application must be on the prescribed form, be notarized, and include a nonrefundable fee. The bill describes the information that a license must include and requires the Commissioner to prescribe the form. The bill sets forth the qualifications required of an applicant for issuance of a license.

The bill provides that each applicant must pass a written examination of reasonable scope prescribed by the Commissioner to be issued a license. The bill requires the Commissioner to adopt the examination not later than January 1, 2004. The bill establishes an advisory committee to assist in the development of the examination and requires the Commissioner to appoint the members not later than the 60th day after the effective date of the Act. The bill requires the Commissioner to transmit within 30 days of the examination the results and the action taken on the application. The bill sets forth procedures for examinations and reexaminations, and provides an exception to the examination requirement for license renewal. The bill provides that each license holder must complete at least 15 hours of continuing education courses that meet the requirements prescribed by the Commissioner.

Each applicant for a license must file a surety bond, as prescribed, another security, or an approved alternative. The bill sets forth the conditions for the withdrawal of deposits made under the security requirements and authorizes the exchange of deposited securities. The bill provides for the payment of all or part of the deposit to a person upon the rendering of a final judgment that is unsatisfied. Failure to

comply with these security requirements constitutes grounds for immediate forfeiture or suspension of a license. The bill sets forth the conditions for suspending and reinstating a license in the case of noncompliance with surety bond requirements, and for denying an application for reinstatement. The bill specifies the procedures for terminating a bond.

The bill authorizes the Commissioner to issue a nonresident license to an eligible applicant who is not a permanent resident of the state and who meets application requirements. The bill sets forth provisions relating to examination requirements for a nonresident applicant and to the authorization of a nonresident's licensing status in the individual's state of residence or the nonresident's status as a licensed adjuster, agent, broker, or other insurance representative. Nonresident license holders are subject to the requirements of the Act and all other state rules and laws. The bill sets forth the conditions that a nonresident must meet after licensure to continue to do business in the state. A nonresident applicant must file a surety bond. The bill provides for a temporary certificate for educational and training purposes for a public insurance adjuster trainee who operates only under a license holder and meets application and registration provisions. The bill sets forth the expiration date of a temporary certificate and prohibits an individual from holding more than two consecutive certificates. The bill makes certain requirements of trainee sponsors. Each holder of a temporary certificate must comply with the security requirements set forth.

The bill provides for the expiration of licenses and sets forth procedures and timeframes for renewing licenses expired or not expired or licenses held by nonresidents. The bill specifies the conditions under which reexamination is required in order to obtain a new license. The bill requires the department to send written notice of license expiration to a license holder. The bill specifies the conditions under which the Commissioner is authorized to deny, suspend, or revoke a license, to impose an administrative penalty, or to institute a disciplinary proceeding. The bill entitles the person affected by such a decision to certain notice and hearing, and appeals processes. The bill sets forth procedures and time frames relating to suspended licenses and provides for the reinstatement of licenses under certain conditions. The bill provides for the collection of fees, set by the Commissioner by rule, for applications, examinations, certificates, and renewals. The bill requires the crediting of fees to the department operating account for use for specified purposes.

The bill authorizes a license holder to receive a contingent fee for adjusting a claim. The bill prohibits the collection of a contingent fee in certain cases and provides for the compensation of a public adjuster for certain services. The bill provides that all funds received as claims proceeds are received and held by the license holder in a fiduciary capacity. A license holder who diverts or appropriates fiduciary funds for personal use is guilty of and punishable for theft. The bill sets forth provisions relating to the disclosure of all financial records of any funds held as fiduciary.

The bill requires each resident license holder to maintain a publicly accessible place of business where records are maintained and requires each nonresident to maintain an agent in the state. The bill provides for the posting of a license on which certain addresses must appear. The bill requires notifications of address changes. The bill requires a license holder to keep a complete record of transactions with specified information for at least 5 years that are open to examination by the Commissioner. The bill sets forth provisions relating to notices made to the last address of a license holder.

The bill prohibits certain conduct on the part of a license holder or an agent or employee of a license holder. The bill requires the Commissioner to adopt, by rule, a code of ethics not later than September 1, 2004 for public adjusters and other guidelines for professional conduct and practices. The bill sets forth provisions regarding soliciting or advertising business and authorizes the Commissioner to adopt rules to define advertisement.

The Act does not limit or diminish the authority of a license holder to investigate or adjust a loss to less than the authority exercised by licensed adjusters. The bill exempts a license holder from certain insurance laws. The bill requires a license holder to prepare each claim for an insured represented by the license holder in accordance with the terms and conditions of the contract of insurance under which recovery is sought. A license issued under the Act is not assignable. The bill does not entitle any person who is not an active

member of the State Bar of Texas to practice law.

The bill authorizes the Commissioner to issue cease and desist orders on unlicensed public adjusters. The bill authorizes the Commissioner to impose an automatic fine for a violation of this Act. An offense under the Act other than a violation relating to the fiduciary capacity of a license holder is a misdemeanor punishable by a fine, confinement, or both. The bill provides that in addition to the criminal penalties prescribed by the Act, a person who violates the Act is subject to administrative penalties. The bill authorizes the Commissioner to adopt rules necessary to implement the Act and requires that the rules be adopted not later than January 1, 2004.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 392 modifies the original by adding to the qualifications required for issuance of a license and by requiring the Commissioner, rather than the department, to issue a license and to prescribe the license application. The substitute modifies the definition of public adjuster. The substitute removes exceptions for trainees to license requirements and creates a trainee registration program. The substitute removes provisions relating to limited and emergency licenses. The substitute removes waivers for license requirements for nonresidents and authorizes the Commissioner to issue nonresident licenses. The bill adds provisions relating to the place of business of a nonresident and to posting licenses. The substitute adds the conditions under which a license may be denied, suspended, or revoked. The substitute adds provisions regarding void contracts and the payment of services rendered under void contracts. The substitute authorizes the department to gather information and evidence and provides for fees to cover related expenses.

The substitute removes certain exemptions from examination requirements. The substitute modifies the composition and duties of the advisory committee. The substitute adds to the information that an examination must include to be of sufficient scope. The substitute removes requirements relating to providing exam instructions to applicants. The substitute provides that the Commissioner must approve the persons who schedule and administer examinations. The bill adds requirements for transmitting exam results. The substitute requires the Commissioner rather than the department to collect and set the amount of fees, removes the \$50 limit on fees, and specifies uses for the fees. The substitute removes provisions relating to fidelity bonds and adds security and surety bond requirements.

The substitute adds provisions relating to contingent fees, prohibited conduct, records maintenance, fiduciary capacity, advertisements, to the last addresses of license holders, the assignability of a license, conduct to comply with a contract, the authority of public adjusters, exemptions for public adjusters from certain insurance laws, license authorization and the unauthorized practice of law.

The substitute requires the Commissioner to prescribe the requirements for continuing education, instead of specifying the information that the program must include, and specifies the number of continuing education hours required annually. The substitute removes provisions relating to exemptions or waivers for continuing education. The substitute provides for a code of ethics. The substitute adds provisions relating to automatic fines and criminal penalties.

EFFECTIVE DATE

On passage or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2003.