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H.B. No. 392

A BILL TO BE ENTITLED

AN ACT

relating to the licensing of public insurance adjusters; providing
administrative and criminal penalties.

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

SECTION 1. Section 1(b), Chapter 407, Acts of the 63rd
Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's
Texas Insurance Code), is amended to read as follows:

(b) "Adjuster" shall not include:

(1) an attorney at law who adjusts insurance losses
from time to time and incidental to the practice of law, and who
does not advertise or represent that he is an adjuster;

(2) a salaried employee of an insurer who is not
regularly engaged in the adjustment, investigation, or supervision
of insurance claims;

(3) persons employed only for the purpose of
furnishing technical assistance to a licensed adjuster, including,
but not limited to, photographers, estimators, private detectives,
engineers, handwriting experts, and attorneys at law;

(4) a licensed agent or general agent of an authorized
insurer who processes undisputed and/or uncontested losses for such
insurer under policies issued by said agent or general agent;

(5) a person who performs clerical duties with no
negotiations with the parties on disputed and/or contested claims;

(6) any person who handles claims arising under life,

1 accident and health insurance policies;

2 (7) a person who is employed principally as a
3 right-of-way agent or right-of-way and claims agent and whose
4 primary responsibility is the acquisition of easements, leases,
5 permits, or other real property rights and whose claims handling
6 arises out of operations under those easements, leases, permits, or
7 other contracts or contractual obligations; [~~or~~]

8 (8) an individual who is employed to investigate
9 suspected fraudulent insurance claims but who does not adjust
10 losses or determine claims payments; or

11 (9) a public insurance adjuster who is licensed under
12 Article 21.07-5, Insurance Code.

13 SECTION 2. Subchapter A, Chapter 21, Insurance Code, is
14 amended by adding Article 21.07-5 to read as follows:

15 Art. 21.07-5. PUBLIC INSURANCE ADJUSTERS

16 Sec. 1. DEFINITIONS. In this article:

17 (1) "License holder" means an individual licensed
18 under this article as a public insurance adjuster.

19 (2) "Person" includes an individual, firm, company,
20 association, organization, partnership, limited liability company,
21 or corporation.

22 (3) "Public insurance adjuster" means an individual
23 who, for compensation, acts on behalf of an insured in negotiating
24 for or effecting the settlement of a claim for loss or damage under
25 any policy of insurance covering real or personal property or who,
26 on behalf of any other public insurance adjuster, investigates,
27 settles, or adjusts or advises or assists an insured with a claim

1 for loss or damage under any policy of insurance covering real or
2 personal property. The term includes an individual who advertises,
3 solicits business, or holds the individual out to the public as an
4 adjuster of claims for loss or damage under any policy of insurance
5 covering real or personal property. The term does not include:

6 (A) an officer or employee of the federal or
7 state government or of a political subdivision of the state
8 government while engaged in the performance of official duties;

9 (B) an attorney engaged in the performance of the
10 attorney's professional duties;

11 (C) insurers admitted to do business in the state
12 and insurance agents licensed by this state while engaged in the
13 performance of duties in connection with insurance transactions;

14 (D) the legal owner of personal property that has
15 been sold under a conditional sales agreement or a mortgagee under
16 the terms of a chattel mortgage;

17 (E) a salaried office employee who performs
18 exclusively clerical or administrative duties attendant to the
19 disposition of the business regulated by this article;

20 (F) a photographer, estimator, appraiser,
21 engineer, or arbitrator who is employed by a licensed public
22 insurance adjuster exclusively for the purpose of furnishing
23 technical assistance to the public insurance adjuster; or

24 (G) a private investigator licensed under
25 Chapter 1702, Occupations Code, while acting within the scope of
26 that license.

27 Sec. 2. NOT LAW LICENSE. This article may not be construed

1 as entitling any person who is not licensed by the Supreme Court of
2 Texas to practice law in this state.

3 Sec. 3. LICENSE REQUIRED; EXEMPTION. (a) Except as
4 provided by Section 17 of this article, an individual may not act as
5 a public insurance adjuster in this state or hold the individual out
6 to be a public insurance adjuster in this state unless the
7 individual holds a license issued by the commissioner under Section
8 5 or 16 of this article.

9 (b) The following persons are exempt from the license
10 requirement under Subsection (a) of this section:

11 (1) an attorney licensed by this state; and

12 (2) a licensed property and casualty agent while
13 acting for an insured concerning a loss under a policy issued by
14 that agent.

15 (c) A contract for services regulated by this article that
16 is entered into by an insured with an individual who is in violation
17 of Subsection (a) of this section may be voided at the option of the
18 insured. If a contract is voided under this subsection, the insured
19 is not liable for the payment of any past services rendered, or
20 future services to be rendered, by that individual under that
21 contract or otherwise.

22 (d) A person employed by the department under this article
23 may administer and examine under oath any person as considered
24 necessary in gathering any information and evidence required by
25 this article and may have that information and evidence reduced to
26 writing if considered necessary. All related expenses shall be
27 paid from the fees collected under this article.

1 Sec. 4. LICENSE APPLICATION. (a) An application for a
2 license under this article must be on a form prescribed by the
3 commissioner.

4 (b) The completed application must be notarized and be
5 accompanied by the license application fee set under Section 12 of
6 this article for each application submitted. The license
7 application fee is nonrefundable.

8 Sec. 5. QUALIFICATIONS FOR LICENSE; ISSUANCE. (a) The
9 commissioner shall issue a resident public insurance adjuster
10 license to an applicant on determining that the application meets
11 the requirements of this article, the application license fee has
12 been paid, and the applicant is an individual who:

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

14 (2) is a resident of this state;

15 (3) is trustworthy and of a moral character that
16 reasonably ensures that the applicant will conduct the business of
17 a public insurance adjuster fairly and in good faith without
18 detriment to the public;

19 (4) has never been convicted of a felony or, if
20 convicted of a felony, has received a full pardon from that
21 conviction and is otherwise relieved of any disabilities connected
22 with that conviction;

23 (5) has sufficient experience or training relating to
24 the assessment of:

25 (A) real and personal property values; and

26 (B) physical loss of or damage to real or
27 personal property that may be the subject of insurance and claims

1 under insurance;

2 (6) has a general understanding of the earnings
3 capabilities of insurance;

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

7 (8) possesses knowledge and experience adequate to
8 enable the applicant to engage in the business of a public insurance
9 adjuster fairly and without injury to the public or to any member of
10 the public with whom the applicant may have business as a public
11 insurance adjuster;

12 (9) has successfully passed the license examination
13 prescribed under Section 9 of this article or is exempt from the
14 examination requirement under this article;

15 (10) has complied with the security requirements
16 prescribed under Section 6 of this article; and

17 (11) has complied with any other requirements under
18 applicable state law, including providing a complete set of
19 fingerprints on request as provided by Section 801.056 of this
20 code.

21 (b) The commissioner may issue a resident public adjuster
22 license to an applicant who has been convicted of a felony if the
23 commissioner determines that the applicant is qualified to act as a
24 public adjuster and that the circumstances surrounding the
25 applicant's conviction do not warrant the denial of a license
26 issued under this article.

27 Sec. 6. FINANCIAL RESPONSIBILITY REQUIREMENTS. (a) Each

1 applicant for a public insurance adjuster license must file a
2 surety bond or other security with the commissioner in accordance
3 with this section.

4 (b) A surety bond filed to meet the purposes of this section
5 must:

6 (1) be executed and issued by a surety insurer;

7 (2) be in the amount of \$50,000;

8 (3) be payable to the commissioner for the use and
9 benefit of any person who recovers a judgment against the
10 individual license holder;

11 (4) specifically authorize recovery by the
12 commissioner of the damages sustained if the license holder is
13 determined by the commissioner to be guilty of fraud or unfair
14 practices in connection with the license holder's business as a
15 public insurance adjuster; and

16 (5) be conditioned on the faithful performance of the
17 license holder in connection with the license holder's business as
18 a public insurance adjuster.

19 (c) Instead of filing a bond under Subsection (b) of this
20 section, an applicant may:

21 (1) file with the commissioner a professional
22 liability policy or similar policy or contract of professional
23 liability coverage acceptable to the commissioner that insures the
24 individual license holder against errors and omissions in
25 connection with the license holder's business as a public insurance
26 adjuster in at least the amount of \$50,000, with a deductible not to
27 exceed \$1,500; or

1 (2) deposit with the comptroller cash in the amount of
2 \$50,000 or securities of the class authorized by Articles 2.08 and
3 2.10 of this code that have a fair market value of at least \$50,000,
4 to be held exclusively for the protection of a person who is
5 entitled to recover a final judgment against the license holder in
6 connection with the license holder's business as a public insurance
7 adjuster.

8 (d) A professional liability policy provided by a public
9 insurance adjuster's employer constitutes satisfactory compliance
10 with the requirements of this section if the employer's
11 professional liability policy has a minimum liability limit of
12 \$250,000 for all employees.

13 (e) If a bond is used to satisfy the requirements of this
14 section, the aggregate liability of the surety for all damages may
15 not exceed the amount of the bond.

16 (f) A deposit with the comptroller made under Subsection
17 (c)(2) of this section may be withdrawn by the license holder only
18 on filing with the commissioner a written statement that the
19 license holder has withdrawn from the business of public insurance
20 adjusting and:

21 (1) does not have any outstanding unsecured
22 liabilities; or

23 (2) has provided for the protection of a person or
24 persons who are entitled to recover a final judgment against the
25 license holder in connection with the license holder's business as
26 a public insurance adjuster by furnishing an errors and omissions
27 policy or a bond as otherwise provided by this section.

1 (g) Securities deposited under this section may be
2 exchanged periodically for other qualified securities.

3 (h) A binding commitment to issue an insurance policy or
4 bond or the tender of the securities in connection with a license
5 application is sufficient evidence of the applicant's ability to
6 comply with this section on issuance of a license.

7 (i) All or part of a deposit may be paid to a person on a
8 showing that a final judgment has been rendered against the license
9 holder in connection with the license holder's business as a public
10 insurance adjuster and the final judgment remains unsatisfied. The
11 final judgment may be paid from the deposit only to the extent of
12 deficiency in satisfaction of the final judgment.

13 (j) A license holder must comply with the security
14 requirements of this section for the license to remain effective.
15 Failure to comply with the security requirements constitutes
16 grounds for the immediate forfeiture or suspension of the license.

17 Sec. 7. SURETY BOND REQUIREMENT. (a) If a license holder
18 uses a surety bond to comply with Section 6 of this article, the
19 license holder shall at all times maintain the surety bond in full
20 force and effect on file with the commissioner.

21 (b) The commissioner shall suspend the license of a public
22 insurance adjuster who fails to maintain a surety bond in
23 compliance with this section. The license may not be reinstated
24 until the license holder files an application for reinstatement, in
25 the format prescribed by the commissioner, accompanied by a proper
26 bond.

27 (c) Notwithstanding the applicant's compliance with this

1 section, the commissioner may deny the application:

2 (1) for any reason that would justify a denial,
3 suspension, or revocation of a license; or

4 (2) for the performance by the applicant of any
5 practice for which a license under this article is required while
6 the applicant is under suspension for failure to keep the surety
7 bond in force.

8 (d) Bonds executed and filed with the commissioner in
9 compliance with this article shall remain in force and effect until
10 the surety has terminated future liability. The surety company
11 shall notify the commissioner not later than the 30th day before the
12 date of termination of the bond.

13 Sec. 8. LICENSE AUTHORIZATION. A license issued under
14 Section 5 or 16 of this article includes the authority to adjust
15 claims for fire and allied coverages, burglary, flood, and all
16 other property claims, both real and personal, and claims for loss
17 of income only if the license holder's client is an insured under
18 the insurance policy under which the claim being adjusted is filed.

19 Sec. 9. LICENSE EXAMINATION; ADVISORY COMMITTEE. (a) Each
20 applicant for a license as a public insurance adjuster, before the
21 issuance of the license, must personally take and pass a written
22 examination to the satisfaction of the commissioner.

23 (b) The commissioner shall prescribe the examination
24 required by this section. The examination must be of sufficient
25 scope to reasonably test the applicant's:

26 (1) knowledge of basic insurance theory, essential
27 elements of contracts, and claims ethics;

1 (2) technical competence in the handling of the types
2 of claims for which the applicant is being tested; and

3 (3) knowledge of:

4 (A) statutory provisions related to the
5 unauthorized practice of law, including Subchapter G, Chapter 81,
6 Government Code;

7 (B) Article 21.21 of this code;

8 (C) the Unauthorized Insurers False Advertising
9 Process Act (Article 21.21-1, Vernon's Texas Insurance Code);

10 (D) Article 21.21-2 of this code;

11 (E) Subchapter E, Chapter 17, Business & Commerce
12 Code;

13 (F) analogous laws as specified by the
14 commissioner; and

15 (G) the duties and responsibilities of public
16 insurance adjusters under the law.

17 (c) The commissioner may appoint a public insurance
18 adjusters examination advisory committee composed of at least five
19 members to assist in developing the examination required by this
20 section. At least three members must be eligible for licensure as
21 public insurance adjusters. At least one member must be a
22 representative of the insurance industry who is not a public
23 insurance adjuster. A member of the advisory committee is not
24 entitled to compensation for service on the committee. A member is
25 entitled to reimbursement for reasonable and necessary expenses
26 incurred in performing services for the committee, subject to any
27 limitation in the General Appropriations Act.

1 (d) Within a reasonable period not to exceed 30 days after
2 the date of the examination, the commissioner shall transmit the
3 results of the examination and the action taken on the application
4 to the applicant.

5 (e) An examination is not required for the renewal of a
6 license issued under Section 5 or 16 of this article.

7 Sec. 10. EXAMINATION PROCEDURES. (a) The written
8 examination may be supplemented by oral examination.

9 (b) The department shall offer the examination at times and
10 places within this state as the commissioner considers necessary to
11 reasonably serve the convenience of both the department and license
12 applicants.

13 (c) The commissioner may require a waiting period of
14 reasonable duration before an applicant who fails the examination,
15 but who is otherwise qualified, may be reexamined.

16 (d) The commissioner must approve the persons who schedule
17 and administer the examination required under Section 9 of this
18 article.

19 Sec. 11. LICENSE FORMAT. (a) The commissioner shall
20 prescribe the form of a license issued under Section 5 or 16 of this
21 article.

22 (b) Each license must state:

23 (1) the name of the public insurance adjuster;

24 (2) the address of the public insurance adjuster's
25 place of business;

26 (3) the date of issuance and the date of expiration of
27 the license; and

1 (4) the name of the firm, if any, with which the public
2 insurance adjuster is employed at the time the license is issued.

3 Sec. 12. FEES. (a) The commissioner shall collect in
4 advance nonrefundable fees for:

5 (1) a public insurance adjuster license application;

6 (2) a nonresident public insurance adjuster license
7 application and license;

8 (3) the public insurance adjuster examination; and

9 (4) a public insurance adjuster trainee certificate
10 under Section 17 of this article.

11 (b) The commissioner shall collect a fee for the renewal of
12 a license or certificate issued under this article.

13 (c) The commissioner shall by rule set the amount of each
14 fee required under this article in an amount reasonable and
15 necessary to implement this article.

16 Sec. 13. USE OF FEES. (a) The fees authorized by this
17 article shall be deposited in the state treasury to the credit of
18 the Texas Department of Insurance operating account.

19 (b) The department may use any portion of the fees collected
20 under this article to enforce this article, to employ persons as it
21 considers necessary to investigate and make reports regarding
22 alleged violations of this code and misconduct on the part of public
23 insurance adjusters, and to pay the salaries and expenses of
24 persons and office employees and other expenses necessary to
25 enforce this article.

26 Sec. 14. PLACE OF BUSINESS; AGENT FOR SERVICE OF PROCESS.

27 (a) Each resident license holder shall maintain a place of

1 business in this state that is publicly accessible and maintain in
2 the place of business the records required by this article. The
3 address of the place of business must appear on the face of the
4 license. The license holder shall promptly notify the commissioner
5 of any change in the address of the license holder's place of
6 business.

7 (b) Each nonresident license holder shall maintain an agent
8 in the state for service of process. The name and address of the
9 nonresident license holder's out-of-state place of business and the
10 name and address of the agent must appear on the face of the
11 license. The license holder shall promptly notify the department
12 of any change in the address of the license holder's place of
13 business or in the agent for service of process.

14 (c) A license issued under this article must at all times be
15 posted in a conspicuous place in the principal place of business of
16 the license holder.

17 Sec. 15. LICENSE NOT ASSIGNABLE. A license issued under
18 this article is not assignable.

19 Sec. 16. NONRESIDENT LICENSE. (a) The commissioner may
20 issue a nonresident license to an applicant for a public insurance
21 adjuster license who is not a permanent resident of this state on
22 determining that the application meets the requirements of this
23 article, the nonresident application license fee has been paid, the
24 applicant meets the requirements imposed under Sections 5(1),
25 (3)-(8), and (11) of this article, and the applicant:

26 (1) except as provided by Subsection (b) of this
27 section, has passed to the satisfaction of the commissioner an

1 examination that is approved by the commissioner and is of
2 sufficient scope as prescribed by Section 9 of this article;

3 (2) is self-employed as a public insurance adjuster or
4 associated with or employed by a public insurance adjusting firm or
5 other public insurance adjuster; and

6 (3) has filed a bond in accordance with Section 6 of
7 this article in the amount required by Subsection (e) of this
8 section.

9 (b) The examination requirement does not apply to an
10 applicant who is licensed as:

11 (1) a resident public insurance adjuster in the
12 applicant's state of residence, if that state requires the passing
13 of a written examination in order to obtain the license and a
14 reciprocal agreement with the appropriate official of that state
15 has been entered into by the department; or

16 (2) a nonresident public insurance adjuster in a state
17 other than the applicant's state of residence, if the state of
18 licensure requires the passing of a written examination in order to
19 obtain the license and a reciprocal agreement with the appropriate
20 official of the state of licensure has been entered into by the
21 department.

22 (c) If currently licensed as a resident public insurance
23 adjuster in the applicant's state of residence, the applicant shall
24 provide with the application a certificate or letter of
25 authorization from the licensing authority of the applicant's state
26 of residence stating that the applicant holds a current or
27 comparable license to act as a public insurance adjuster. The

1 certificate or letter must be signed by the appropriate licensing
2 official of the applicant's state of residence and must disclose:

3 (1) whether the applicant has:

4 (A) ever had any license or eligibility to hold
5 any license declined, denied, suspended, or revoked;

6 (B) ever been placed on probation; or

7 (C) been subject to an administrative fine or
8 penalty; and

9 (2) if an action described by Subdivision (1) of this
10 subsection occurred, the reason for the action.

11 (d) If the applicant's state of residence does not require
12 licensure as a resident public insurance adjuster and the applicant
13 has been licensed as an adjuster, agent, broker, or other insurance
14 representative in the applicant's state of residence or any other
15 state within the past three years, the applicant must provide with
16 the application a certificate or letter of authorization from the
17 licensing authority stating that the applicant holds or has held a
18 license to act as an adjuster, agent, broker, or other insurance
19 representative. The certificate or letter must be signed by the
20 appropriate licensing official and must disclose the information
21 required under Subsections (c)(1) and (2) of this section.

22 (e) An applicant for a nonresident license must file a
23 surety bond with the department in the amount of \$50,000.

24 (f) A nonresident license holder shall comply with all the
25 requirements of this article in performing any of the activities of
26 a public insurance adjuster in this state, including the
27 requirements relating to records maintenance imposed under Section

1 25 of this article. The failure of a nonresident license holder to
2 properly maintain records in accordance with this article and make
3 them available to the department on request constitutes grounds for
4 the immediate suspension of the nonresident license issued under
5 this article.

6 (g) Each individual who holds a nonresident license shall
7 comply with all other laws and rules of this state applicable to
8 public insurance adjusters, including the law governing the
9 collection of state sales tax as appropriate for services performed
10 under this article.

11 (h) After licensure as a nonresident public insurance
12 adjuster, as a condition of doing business in this state, the
13 license holder must submit to the department annually, not later
14 than January 1 and in the format prescribed by the commissioner, an
15 affidavit certifying that the license holder is familiar with and
16 understands the laws specified by Section 9 of this article, the
17 applicable rules adopted under those laws, and the terms and
18 conditions of the types of insurance contracts that provide
19 coverage on real and personal property. Compliance with the filing
20 requirement provided by this subsection is necessary to the
21 issuance, continuation, reinstatement, or renewal of a nonresident
22 public insurance adjuster license.

23 Sec. 17. REGISTRATION PROGRAM FOR TRAINEES. (a) A public
24 insurance adjuster trainee must register with the department for a
25 temporary certificate under this section. An applicant for a
26 temporary certificate as a trainee shall apply to the commissioner
27 in the format prescribed by the commissioner. The application must

1 be accompanied by the nonrefundable registration fee.

2 (b) A temporary certificate may be issued under this section
3 only for educational and training purposes. The holder of a
4 temporary certificate may practice only under the direction and
5 sponsorship of a license holder.

6 (c) The sponsor of a public insurance adjuster trainee shall
7 attest, in the format prescribed by the commissioner, that the
8 trainee is under the supervision and control of the sponsor and that
9 the sponsor has met the security requirements of Section 6 of this
10 article.

11 (d) A temporary certificate expires on the 180th day after
12 the date of issuance and may be renewed once on application to the
13 commissioner. An individual may not hold more than two consecutive
14 temporary certificates.

15 (e) Each individual who holds a temporary certificate under
16 this section must comply with the security requirements imposed
17 under Section 6 of this article. The security requirements may be
18 fulfilled by a surety bond purchased by the sponsoring license
19 holder if the bond also covers the acts described by Section 6(b) of
20 this article with regard to the temporary certificate holder. The
21 security requirements may also be fulfilled if the sponsoring
22 license holder complies with the requirements in Section 6(c)(1) of
23 this article and the temporary certificate holder is an employee of
24 the sponsoring license holder covered under a professional
25 liability policy or similar policy or contract of professional
26 liability coverage purchased by the sponsoring license holder in
27 compliance with Section 6(c)(1) of this article.

1 Sec. 18. CONDUCT TO COMPLY WITH CONTRACT. A license holder
2 shall prepare each claim for an insured represented by the license
3 holder in accordance with the terms and conditions of the contract
4 of insurance under which recovery is sought.

5 Sec. 19. CODE OF ETHICS. The commissioner by rule shall
6 adopt:

7 (1) a code of ethics for public insurance adjusters
8 that fosters the education of public insurance adjusters concerning
9 the ethical, legal, and business principles that should govern
10 their conduct;

11 (2) recommendations regarding the solicitation of the
12 adjustment of losses by public insurance adjusters; and

13 (3) any other principles of conduct or procedures that
14 the commissioner considers necessary and reasonable.

15 Sec. 20. PUBLIC INSURANCE ADJUSTER AUTHORITY; EXEMPTION
16 FROM CERTAIN INSURANCE LAWS. (a) This article does not limit or
17 diminish the authority of a license holder to investigate or adjust
18 a loss to less than the authority for that purpose that may be
19 exercised by an adjuster licensed under Chapter 407, Acts of the
20 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's
21 Texas Insurance Code).

22 (b) A license holder is exempt from:

23 (1) Articles 21.01, 21.02, 21.04, 21.07, and 21.14 of
24 this code;

25 (2) Article 21.07-1 of this code, as added by Chapter
26 703, Acts of the 77th Legislature, Regular Session, 2001;

27 (3) the Managing General Agents' Licensing Act

1 (Article 21.07-3, Vernon's Texas Insurance Code); and

2 (4) Chapter 407, Acts of the 63rd Legislature, Regular
3 Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code).

4 Sec. 21. LICENSE RENEWAL. (a) A license issued under this
5 article expires on the second anniversary of the date of issuance
6 unless suspended or revoked by the commissioner. A license holder
7 may renew a license that has not expired or has not been suspended
8 or revoked by filing with the department a properly completed
9 renewal application, in the format prescribed by the commissioner,
10 that demonstrates continued compliance with the license
11 requirements imposed under this article or adopted by rule by the
12 commissioner. The completed renewal application must be
13 accompanied by the renewal fee and evidence of compliance with the
14 continuing education requirements imposed under Section 22 of this
15 article.

16 (b) A license holder must submit the completed renewal
17 application, evidence of compliance with the continuing education
18 requirements, and the renewal fee to the commissioner not later
19 than the 30th day before the date on which the license is scheduled
20 to expire. The original license continues in force until:

21 (1) the department issues the renewal license; or

22 (2) the commissioner issues an order revoking the
23 license.

24 (c) A person whose license has been expired for 90 days or
25 less may renew the license by filing a completed renewal
26 application in the format prescribed by the commissioner and
27 evidence of compliance with the continuing education requirements

1 and by paying to the department the required renewal fee and an
2 additional fee that is equal to one-half of the renewal fee for the
3 license.

4 (d) A person whose license has been expired for more than 90
5 days but less than one year may not renew the license but is
6 entitled to a new license without taking the applicable examination
7 if the person submits to the department a new application, evidence
8 of compliance with the continuing education requirements, the
9 license fee, and an additional fee equal to one-half of the license
10 fee.

11 (e) A person whose license has been expired for one year or
12 more may not renew the license. The person may obtain a new license
13 by submitting to reexamination, if examination is required for
14 original issuance of the license, and by complying with the
15 requirements and procedures for obtaining an original license.

16 (f) The department may renew without reexamination an
17 expired license of a person who was licensed in this state, moved to
18 another state, and is currently licensed and has been in continual
19 practice in the other state up to and including the date of the
20 application. The person must pay to the department a fee that is
21 equal to the license fee.

22 (g) Not later than the 30th day after moving from one state
23 to another state, a nonresident or resident public insurance
24 adjuster licensed in this state shall file with the department:

- 25 (1) the license holder's address; and
26 (2) proof of authorization to engage in the business
27 of public insurance adjuster in the new state of residence.

1 (h) The department may not charge a fee or require a license
2 application under Subsection (g) of this section.

3 (i) At least 30 days before the expiration of a license, the
4 department shall send written notice of the impending license
5 expiration to the license holder at the license holder's last known
6 mailing address according to the records of the department.

7 Sec. 22. CONTINUING EDUCATION REQUIREMENTS. (a) Each
8 license holder must annually complete at least 15 hours of
9 continuing education courses. The commissioner by rule shall
10 prescribe the requirements for continuing education under this
11 section.

12 (b) The commissioner may waive continuing education
13 requirements under this section for a nonresident license holder
14 who also holds a valid license issued by another state that has
15 continuing education requirements substantially equivalent to the
16 continuing education requirements established under this section.

17 Sec. 23. COMMISSION. (a) Except as provided by Subsection
18 (b) of this section, a license holder may receive a commission for
19 rendering services under this article. The commission may consist
20 of an hourly fee, a flat fee, a percentage of the total amount paid
21 by an insurer to resolve a claim, or another method of compensation.
22 The total commission collected under this section may not exceed 10
23 percent of the amount of the insurance settlement on the claim.

24 (b) A license holder may not receive a commission consisting
25 of a percentage of the total amount paid by an insurance company on
26 a claim for which the insurance company, not later than the third
27 day after the date on which the loss is reported to the insurance

1 company, either pays or commits in writing to pay to the insured the
2 policy limit of the insurance policy in accordance with Section
3 862.053 of this code. The license holder is entitled to reasonable
4 compensation from the insured for services provided by the license
5 holder on behalf of the insured, based on the time spent on a claim
6 that is subject to this subsection and expenses incurred by the
7 license holder, until the claim is paid or the insured receives a
8 written commitment to pay from the insurance company.

9 Sec. 24. PROHIBITED CONDUCT. (a) A license holder may not,
10 directly or indirectly, act within this state as a public insurance
11 adjuster without having first entered into a contract, in writing,
12 on a form approved by the commissioner, executed in duplicate by the
13 license holder and the insured or the insured's authorized
14 representative. One copy of the contract shall be kept on file by
15 the license holder and must be available at all times for
16 inspection, without notice, by the commissioner or the
17 commissioner's authorized representative.

18 (b) A license holder may not solicit or attempt to solicit a
19 client for employment during the progress of a loss-producing
20 natural disaster occurrence.

21 (c) A license holder may not solicit or attempt to solicit
22 business on a loss or a claim in person, by telephone, or in any
23 other manner at any time except between the hours of 9 a.m. and 9
24 p.m. on a weekday or a Saturday, and between noon and 9 p.m. on a
25 Sunday. This subsection does not prohibit a license holder from
26 accepting phone calls or personal visits during the prohibited
27 hours from an insured on the insured's initiation.

1 (d) A license holder may not use any form of contract that is
2 not approved by the commissioner. The contract must contain a
3 provision allowing the client to rescind the contract by written
4 notice to the license holder within 72 hours of signature and must
5 include in 12-point boldfaced type, prominently displayed, the
6 statement: "WE REPRESENT THE INSURED ONLY."

7 (e) A license holder may not knowingly make any false report
8 to the license holder's employer or client and may not divulge to
9 any other person, except as the law may require, any information
10 obtained except at the direction of the employer or the client for
11 whom the information is obtained.

12 (f) A license holder may not use a badge in connection with
13 the official activities of the license holder's business.

14 (g) A license holder may not permit an employee or agent, in
15 the employee's or agent's own name, to:

16 (1) advertise;

17 (2) solicit or engage clients;

18 (3) furnish reports or present bills to clients; or

19 (4) in any manner conduct business for which a license
20 is required under this article.

21 (h) A license holder may not render legal services or
22 perform acts that constitute the practice of law, including the
23 giving of legal advice to any person in the license holder's
24 capacity as a public insurance adjuster.

25 (i) A license holder may not represent an insured on a claim
26 or charge a fee to an insured while representing the insurance
27 carrier against which the claim is made.

1 (j) A license holder may not solicit or attempt to solicit
2 business, directly or indirectly, on a bodily injury loss covered
3 by a life, health, or accident insurance policy or act in any manner
4 on any claim in which the license holder's client is not an insured
5 under an insurance policy.

6 (k) A license holder may not, without the knowledge and
7 written consent of the insured, acquire an interest in salvaged
8 property that is the subject of a claim adjusted by the license
9 holder.

10 (l) A license holder may not participate directly or
11 indirectly in the reconstruction, repair, or restoration of damaged
12 property that is the subject of a claim adjusted by the license
13 holder or engage in any other activities that may reasonably be
14 construed as presenting a conflict of interest, including
15 soliciting or accepting any remuneration from, or having a
16 financial interest in, any salvage firm, repair firm, or other firm
17 that obtains business in connection with a claim the license holder
18 has a contract or agreement to adjust.

19 (m) A license holder may not:

20 (1) use any misrepresentation to solicit a contract or
21 agreement to adjust a claim;

22 (2) advance money to a potential client or insured;

23 (3) offer to pay, give, or allow to be paid or given,
24 directly or indirectly, a fee, commission, or other valuable
25 consideration to a person for referring a loss to the license holder
26 unless the license holder employs the person for that purpose and
27 the person is licensed to act as a public insurance adjuster under

1 this article;

2 (4) use a letterhead, advertisement, other printed
3 matter, or any other means to represent that the license holder is
4 an instrumentality of the federal government, of a state, or of a
5 political subdivision of a state; or

6 (5) use a name different from that under which the
7 license holder is currently licensed in an advertisement,
8 solicitation, or contract for business.

9 Sec. 25. RECORDS MAINTENANCE. (a) A license holder shall
10 keep a complete record of each of the license holder's transactions
11 as a public insurance adjuster. The records must include:

12 (1) the name of the insured;

13 (2) the date, location, and amount of the loss;

14 (3) a copy of the contract between the license holder
15 and the insured;

16 (4) the name of the insurer and the amount, expiration
17 date, and number of each policy under which the loss is covered;

18 (5) an itemized statement of the recoveries by the
19 insured from the sources known to the license holder;

20 (6) the total compensation received for the
21 adjustment; and

22 (7) an itemized statement of disbursements made by the
23 license holder from recoveries received on behalf of the insured.

24 (b) The license holder shall maintain the records required
25 to be kept under this section for at least five years after the date
26 of the termination of a transaction with the insured. The records
27 must be open to examination by the commissioner.

1 Sec. 26. FIDUCIARY CAPACITY. (a) All funds received as
2 claim proceeds by a license holder acting as a public insurance
3 adjuster are received and held by the license holder in a fiduciary
4 capacity. A license holder who diverts or appropriates any
5 fiduciary funds for the license holder's personal use is guilty of
6 theft and is punishable for theft as provided by law.

7 (b) Any payment received or accepted by a license holder
8 from an insurance company must include the insured's name and must
9 require the endorsement of the insured. A license holder may not
10 accept any payment from an insurance company made solely in the name
11 of the license holder or endorse any payment made solely to and on
12 behalf of the insured.

13 (c) An applicant for a license to act as a public insurance
14 adjuster must, as part of the application, endorse an authorization
15 for disclosure to the commissioner of all financial records of any
16 funds the public insurance adjuster holds as a fiduciary. The
17 authorization shall continue in force and effect for as long as the
18 license holder continues to be licensed under this article.

19 Sec. 27. NOTICE TO LAST ADDRESS. Notice by registered mail,
20 return receipt requested, sent to the last known address of an
21 applicant for a license, license holder, or other person to whom
22 notice is required to be sent under this article, as reflected by
23 the records of the department, constitutes sufficient notice under
24 this article.

25 Sec. 28. ADVERTISEMENTS. Each advertisement by a license
26 holder soliciting or advertising business must display the license
27 holder's name, address, and license number as they appear in the

1 records of the commissioner. The commissioner may adopt rules
2 defining the term "advertisement" as used in this section.

3 Sec. 29. RULES. The commissioner may adopt reasonable and
4 necessary rules to implement this article, including rules
5 regarding the:

6 (1) qualifications of license holders, in addition to
7 those prescribed by this article, that are necessary to promote and
8 protect the public interest; and

9 (2) regulation of the conduct of license holders.

10 Sec. 30. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a)
11 The commissioner may deny an application for a license under this
12 article or suspend or revoke a license issued under this article on
13 the basis of:

14 (1) a violation of this article or of any rule adopted
15 by the commissioner under this article;

16 (2) a cause that constitutes grounds for denial of an
17 original license;

18 (3) wilful misrepresentation or fraud in obtaining a
19 license;

20 (4) failure to pass a required license examination;

21 (5) the misappropriation or conversion of money
22 required to be held in a fiduciary capacity;

23 (6) material misrepresentation, with intent to
24 deceive, of the terms of an insurance contract;

25 (7) engaging in a fraudulent transaction;

26 (8) demonstrated incompetence or untrustworthiness in
27 the conduct of the license holder's affairs under the license, as

1 determined by the commissioner;

2 (9) conviction of a felony by a final judgment in a
3 court of competent jurisdiction; or

4 (10) material misrepresentation, with intent to
5 deceive, of the person's status as a public insurance adjuster.

6 (b) If the department proposes to refuse to issue an
7 original license under this article or to suspend, revoke, or
8 refuse to renew a license under this article, the person affected is
9 entitled to notice and hearing in the manner provided by Section
10 3A(b), Article 21.01-2, of this code.

11 (c) A final order entered as a result of a hearing under this
12 section may be appealed as provided by Subchapter D, Chapter 36, of
13 this code.

14 (d) An order suspending a license issued under this article
15 must specify the period of the suspension. A suspension may not
16 exceed 12 months.

17 (e) The holder of a license that is revoked or suspended for
18 cause shall surrender the license to the commissioner on demand.

19 (f) The commissioner may issue a license or reinstate a
20 suspended or revoked license on a finding that the cause for
21 suspension, revocation, or denial no longer exists.

22 (g) A person whose license is suspended under this article
23 may apply for a new license only after the expiration of the period
24 of suspension. A person whose license is revoked or whose
25 application for a license is denied may not apply for a new license
26 until the fifth anniversary of:

27 (1) the effective date of the denial or revocation; or

1 (2) if the applicant or license holder seeks judicial
2 review of the department's action, the date of the final court order
3 or decree affirming that action.

4 (h) The commissioner may deny a timely application filed
5 under Subsection (g) of this section if the applicant does not show
6 good cause why the denial of the previous license application or the
7 revocation of the license should not be considered a bar to the
8 issuance of the new license. This subsection does not apply to an
9 applicant whose license application was denied for failure to:

10 (1) pass the required written examination; or

11 (2) submit a properly completed license application.

12 (i) The commissioner, in lieu of suspending or revoking a
13 license for a violation of this article or a rule adopted under this
14 article, may impose on a license holder an administrative penalty
15 in the manner prescribed by Chapter 84 of this code in an amount not
16 to exceed \$1,000 for each violation if the commissioner determines
17 that action better serves the purposes of this article.

18 (j) The department may institute a disciplinary proceeding
19 against a license holder for conduct that the license holder
20 committed before the effective date of a voluntary surrender or
21 automatic forfeiture of the license. In the proceeding, the fact
22 that the license holder has surrendered or forfeited the license
23 does not affect the license holder's culpability for the conduct.

24 Sec. 31. CEASE AND DESIST ORDER. If the commissioner
25 believes that a person is engaging in acts or practices in violation
26 of Section 3(a) of this article, the commissioner may, without
27 notice or hearing, issue and cause to be served on the person an

1 order requiring the person to immediately cease and desist from
2 engaging further in those acts or practices.

3 Sec. 32. AUTOMATIC FINES. The commissioner may impose an
4 automatic fine in the manner prescribed by Section 5A, Article
5 21.01-2, of this code for a violation of this article.

6 Sec. 33. CRIMINAL PENALTY; SANCTIONS. (a) A person commits
7 an offense if the person violates this article. Except as provided
8 by Section 26(a) of this article, an offense under this subsection
9 is a misdemeanor punishable by:

10 (1) a fine in an amount not to exceed \$1,000;

11 (2) confinement in county jail for a term not to exceed
12 six months; or

13 (3) both the fine and confinement.

14 (b) In addition to the criminal penalties imposed under
15 Subsection (a) of this section, a person who violates this article
16 is subject to the sanctions provided by Section 7, Article 21.21, of
17 this code as if the person had violated an order under that section.

18 SECTION 3. (a) The commissioner of insurance shall appoint
19 the members of the public insurance adjusters examination advisory
20 committee created under Section 9(c), Article 21.07-5, Insurance
21 Code, as added by this Act, not later than the 60th day after the
22 effective date of this Act.

23 (b) The commissioner of insurance shall adopt the
24 examination required by Section 9, Article 21.07-5, Insurance Code,
25 as added by this Act, not later than January 1, 2004. Pending the
26 adoption of the examination, the commissioner may issue a temporary
27 license to practice as a public insurance adjuster to an individual

1 who satisfies all the requirements for issuance of the license
2 except the examination requirement. A temporary license issued
3 under this subsection expires June 1, 2004, and may not be renewed
4 except as determined by the commissioner.

5 (c) The commissioner of insurance shall adopt the code of
6 ethics prescribed under Section 19, Article 21.07-5, Insurance
7 Code, as added by this Act, not later than September 1, 2004.

8 (d) Subject to the provisions of Subsections (a), (b), and
9 (c) of this section, the commissioner of insurance shall adopt
10 rules as necessary to implement Article 21.07-5, Insurance Code, as
11 added by this Act, not later than January 1, 2004.

12 SECTION 4. This Act takes effect immediately if it receives
13 a vote of two-thirds of all the members elected to each house, as
14 provided by Section 39, Article III, Texas Constitution. If this
15 Act does not receive the vote necessary for immediate effect, this
16 Act takes effect September 1, 2003.