

By: Seaman, Smithee, Eiland, Thompson,  
Naishtat

H.B. No. 392

Substitute the following for H.B. No. 392:

By: Thompson

C.S.H.B. No. 392

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the licensing of public insurance adjusters; providing  
3 administrative and criminal penalties.

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

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

8 (b) "Adjuster" shall not include:

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

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

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

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

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

24 (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, or aids in any manner, an  
24 insured in negotiating for or effecting the settlement of a claim  
25 for loss or damage under any policy of insurance covering real or  
26 personal property or who, on behalf of any other public insurance  
27 adjuster, investigates, settles, or adjusts or advises or assists

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

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

10 (B) a charitable organization incorporated under  
11 the laws of this state that is organized and maintained for the  
12 public good and not for private profit;

13 (C) an attorney engaged in the performance of the  
14 attorney's professional duties;

15 (D) insurers admitted to do business in the state  
16 and insurance agents licensed by this state while engaged in the  
17 performance of duties in connection with insurance transactions;

18 (E) the legal owner of personal property that has  
19 been sold under a conditional sales agreement or a mortgagee under  
20 the terms of a chattel mortgage;

21 (F) a salaried office employee who performs  
22 exclusively clerical or administrative duties attendant to the  
23 disposition of the business regulated by this article;

24 (G) a photographer, estimator, appraiser,  
25 engineer, or arbitrator who is employed by a licensed public  
26 insurance adjuster exclusively for the purpose of furnishing  
27 technical assistance to the public insurance adjuster; or

1           (H) a private investigator licensed under  
2 Chapter 1702, Occupations Code, while acting within the scope of  
3 that license.

4           Sec. 2. NOT LAW LICENSE. This article may not be construed  
5 as entitling any person who is not an active member of the State Bar  
6 of Texas to practice law in this state.

7           Sec. 3. LICENSE REQUIRED; EXEMPTION. (a) Except as  
8 provided by Section 17 of this article, an individual may not act as  
9 a public insurance adjuster in this state or hold the individual out  
10 to be a public insurance adjuster in this state unless the  
11 individual holds a license issued by the commissioner under Section  
12 5 or 16 of this article.

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

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

16                 (2) a licensed property and casualty agent while  
17 acting for an insured concerning a loss under a policy issued by  
18 that agent.

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

26           (d) A person employed by the department under this article  
27 may administer and examine under oath any person as considered

1 necessary in gathering any information and evidence required by  
2 this article and may have that information and evidence reduced to  
3 writing if considered necessary. All related expenses shall be  
4 paid from the fees collected under this article.

5 Sec. 4. LICENSE APPLICATION. (a) An application for a  
6 license under this article must be on a form prescribed by the  
7 commissioner.

8 (b) The completed application must be notarized and be  
9 accompanied by the license application fee set under Section 12 of  
10 this article for each application submitted. The license  
11 application fee is nonrefundable.

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

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

18 (2) is a resident of this state;

19 (3) is trustworthy and of a moral character that  
20 reasonably ensures that the applicant will conduct the business of  
21 a public insurance adjuster fairly and in good faith without  
22 detriment to the public;

23 (4) has never been convicted of a felony or, if  
24 convicted of a felony, has received a full pardon from that  
25 conviction and is otherwise relieved of any disabilities connected  
26 with that conviction;

27 (5) has sufficient experience or training relating to

1 the assessment of:

2 (A) real and personal property values; and

3 (B) physical loss of or damage to real or  
4 personal property that may be the subject of insurance and claims  
5 under insurance;

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

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

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

16 (9) has successfully passed the license examination  
17 prescribed under Section 9 of this article or is exempt from the  
18 examination requirement under this article;

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

21 (11) has complied with any other requirements under  
22 applicable state law, including providing a complete set of  
23 fingerprints on request as provided by Section 801.056 of this  
24 code.

25 Sec. 6. SECURITY REQUIREMENTS. (a) Each applicant for a  
26 public insurance adjuster license must file a surety bond or other  
27 security with the commissioner in accordance with this section.

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

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

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

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

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

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

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

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

25            (2) deposit with the comptroller cash in the amount of  
26 \$50,000 or securities of the class authorized by Articles 2.08 and  
27 2.10 of this code that have a fair market value of at least \$50,000,

1 to be held exclusively for the protection of a person who is  
2 entitled to recover a final judgment against the license holder in  
3 connection with the license holder's business as a public insurance  
4 adjuster.

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

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

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

18 (1) does not have any outstanding unsecured  
19 liabilities; or

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

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

27 (h) A binding commitment to issue an insurance policy or



1 bond or the tender of the securities in connection with a license  
2 application is sufficient evidence of the applicant's ability to  
3 comply with this section on issuance of a license.

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

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

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

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

24 (c) Notwithstanding the applicant's compliance with this  
25 section, the commissioner may deny the application:

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

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

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

10           Sec. 8. LICENSE AUTHORIZATION. A license issued under  
11 Section 5 or 16 of this article includes the authority to adjust  
12 claims for fire and allied coverages, burglary, flood, and all  
13 other property claims, both real and personal, and claims for loss  
14 of income.

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

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

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

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

26                   (3) knowledge of:

27                           (A) Article 21.21 of this code;

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

3                   (C) Article 21.21-2 of this code;

4                   (D) Subchapter E, Chapter 17, Business & Commerce  
5 Code;

6                   (E) analogous laws as specified by the  
7 commissioner; and

8                   (F) the duties and responsibilities of public  
9 insurance adjusters under the law.

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

21           (d) Within a reasonable period not to exceed 30 days after  
22 the date of the examination, the commissioner shall transmit the  
23 results of the examination and the action taken on the application  
24 to the applicant.

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

27           Sec. 10. EXAMINATION PROCEDURES. (a) The written

1 examination may be supplemented by oral examination.

2 (b) The department shall offer the examination at times and  
3 places within this state as the commissioner considers necessary to  
4 reasonably serve the convenience of both the department and license  
5 applicants.

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

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

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

15 (b) Each license must state:

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

17 (2) the address of the public insurance adjuster's  
18 place of business;

19 (3) the date of issuance and the date of expiration of  
20 the license; and

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

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

25 (1) a public insurance adjuster license application;

26 (2) a nonresident public insurance adjuster license  
27 application;

1           (3) the public insurance adjuster examination; and  
2           (4) a public insurance adjuster trainee certificate  
3 under Section 17 of this article.

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

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

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

12           (b) The department may use any portion of the fees collected  
13 under this article to enforce this article, to employ persons as it  
14 considers necessary to investigate and make reports regarding  
15 alleged violations of this code and misconduct on the part of public  
16 insurance adjusters, and to pay the salaries and expenses of  
17 persons and office employees and other expenses necessary to  
18 enforce this article.

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

20           (a) Each resident license holder shall maintain a place of  
21 business in this state that is publicly accessible and maintain in  
22 the place of business the records required by this article. The  
23 address of the place of business must appear on the face of the  
24 license. The license holder shall promptly notify the commissioner  
25 of any change in the address of the license holder's place of  
26 business.

27           (b) Each nonresident license holder shall maintain an agent

1 in the state for service of process. The name and address of the  
2 nonresident license holder's out-of-state place of business and the  
3 name and address of the agent must appear on the face of the  
4 license. The license holder shall promptly notify the department  
5 of any change in the address of the license holder's place of  
6 business or in the agent for service of process.

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

10 Sec. 15. LICENSE NOT ASSIGNABLE. A license issued under  
11 this article is not assignable.

12 Sec. 16. NONRESIDENT LICENSE. (a) The commissioner may  
13 issue a nonresident license to an applicant for a public insurance  
14 adjuster license who is not a permanent resident of this state on  
15 determining that the application meets the requirements of this  
16 article, the nonresident application license fee has been paid, the  
17 applicant meets the requirements imposed under Sections 5(1),  
18 (3)-(8), and (11) of this article, and the applicant:

19 (1) except as provided by Subsection (b) of this  
20 section, has passed to the satisfaction of the commissioner an  
21 examination that is approved by the commissioner and is of  
22 sufficient scope as prescribed by Section 9 of this article;

23 (2) is self-employed as a public insurance adjuster or  
24 associated with or employed by a public insurance adjusting firm or  
25 other public insurance adjuster; and

26 (3) has filed a bond in accordance with Section 6 of  
27 this article in the amount required by Subsection (e) of this

1 section.

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

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

9 (2) a nonresident public insurance adjuster in a state  
10 other than the applicant's state of residence, if the state of  
11 licensure requires the passing of a written examination in order to  
12 obtain the license and a reciprocal agreement with the appropriate  
13 official of the state of licensure has been entered into by the  
14 department.

15 (c) If currently licensed as a resident public insurance  
16 adjuster in the applicant's state of residence, the applicant shall  
17 provide with the application a certificate or letter of  
18 authorization from the licensing authority of the applicant's state  
19 of residence stating that the applicant holds a current or  
20 comparable license to act as a public insurance adjuster. The  
21 certificate or letter must be signed by the appropriate licensing  
22 official of the applicant's state of residence and must disclose:

23 (1) whether the applicant has:

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

26 (B) ever been placed on probation; or

27 (C) been subject to an administrative fine or

1 penalty; and

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

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

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

17 (f) A nonresident license holder shall comply with all the  
18 requirements of this article in performing any of the activities of  
19 a public insurance adjuster in this state, including the  
20 requirements relating to records maintenance imposed under Section  
21 25 of this article. The failure of a nonresident license holder to  
22 properly maintain records in accordance with this article and make  
23 them available to the department on request constitutes grounds for  
24 the immediate suspension of the nonresident license issued under  
25 this article.

26 (g) Each individual who holds a nonresident license shall  
27 comply with all other laws and rules of this state applicable to



1 public insurance adjusters, including the law governing the  
2 collection of state sales tax as appropriate for services performed  
3 under this article.

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

16 Sec. 17. REGISTRATION PROGRAM FOR TRAINEES. (a) A public  
17 insurance adjuster trainee must register with the department for a  
18 temporary certificate under this section. An applicant for a  
19 temporary certificate as a trainee shall apply to the commissioner  
20 in the format prescribed by the commissioner. The application must  
21 be accompanied by the nonrefundable registration fee.

22 (b) A temporary certificate may be issued under this section  
23 only for educational and training purposes. The holder of a  
24 temporary certificate may practice only under the direction and  
25 sponsorship of a license holder.

26 (c) The sponsor of a public insurance adjuster trainee shall  
27 attest, in the format prescribed by the commissioner, that the

1 trainee is under the supervision and control of the sponsor and that  
2 the sponsor has met the security requirements of Section 6 of this  
3 article.

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

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

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

25 Sec. 19. CODE OF ETHICS. The commissioner by rule shall  
26 adopt:

27 (1) a code of ethics for public insurance adjusters

1 that fosters the education of public insurance adjusters concerning  
2 the ethical, legal, and business principles that should govern  
3 their conduct;

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

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

8 Sec. 20. PUBLIC INSURANCE ADJUSTER AUTHORITY; EXEMPTION  
9 FROM CERTAIN INSURANCE LAWS. (a) This article does not limit or  
10 diminish the authority of a license holder to investigate or adjust  
11 a loss to less than the authority for that purpose that may be  
12 exercised by an adjuster licensed under Chapter 407, Acts of the  
13 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's  
14 Texas Insurance Code).

15 (b) A license holder is exempt from:

16 (1) Articles 21.01, 21.02, 21.04, 21.07, and 21.14 of  
17 this code;

18 (2) Article 21.07-1 of this code, as added by Chapter  
19 703, Acts of the 77th Legislature, Regular Session, 2001;

20 (3) the Managing General Agents' Licensing Act  
21 (Article 21.07-3, Vernon's Texas Insurance Code); and

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

24 Sec. 21. LICENSE RENEWAL. (a) A license issued under this  
25 article expires on the second anniversary of the date of issuance  
26 unless suspended or revoked by the commissioner. A license holder  
27 may renew a license that has not expired or has not been suspended

1 or revoked by filing with the department a properly completed  
2 renewal application, in the format prescribed by the commissioner,  
3 that demonstrates continued compliance with the license  
4 requirements imposed under this article or adopted by rule by the  
5 commissioner. The completed renewal application must be  
6 accompanied by the renewal fee and evidence of compliance with the  
7 continuing education requirements imposed under Section 22 of this  
8 article.

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

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

15 (2) the commissioner issues an order revoking the  
16 license.

17 (c) A person whose license has been expired for 90 days or  
18 less may renew the license by filing a completed renewal  
19 application in the format prescribed by the commissioner and  
20 evidence of compliance with the continuing education requirements  
21 and by paying to the department the required renewal fee and an  
22 additional fee that is equal to one-half of the renewal fee for the  
23 license.

24 (d) A person whose license has been expired for more than 90  
25 days but less than one year may not renew the license but is  
26 entitled to a new license without taking the applicable examination  
27 if the person submits to the department a new application, evidence

1 of compliance with the continuing education requirements, the  
2 license fee, and an additional fee equal to one-half of the license  
3 fee.

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

9 (f) The department may renew without reexamination an  
10 expired license of a person who was licensed in this state, moved to  
11 another state, and is currently licensed and has been in continual  
12 practice in the other state up to and including the date of the  
13 application. The person must pay to the department a fee that is  
14 equal to the license fee.

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

18 (1) the license holder's address; and

19 (2) proof of authorization to engage in the business  
20 of public insurance adjuster in the new state of residence.

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

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

27 Sec. 22. CONTINUING EDUCATION REQUIREMENTS. Each license

1 holder must annually complete at least 15 hours of continuing  
2 education courses. The commissioner by rule shall prescribe the  
3 requirements for continuing education under this section.

4 Sec. 23. CONTINGENT FEES. (a) Except as provided by  
5 Subsection (b) of this section, a license holder may receive a  
6 contingent fee for adjusting a claim under this article. A  
7 contingent fee collected under this section may not exceed 10  
8 percent of the amount of the insurance settlement on the claim.

9 (b) A license holder may not receive a contingent fee on a  
10 claim for which an insurance company, not later than the third day  
11 after the date on which the loss is reported to the insurance  
12 company, either pays or commits in writing to pay to the insured the  
13 policy limit of the insurance policy in accordance with Section  
14 862.053 of this code. The license holder is entitled to reasonable  
15 compensation from the insured for services provided by the license  
16 holder on behalf of the insured, based on the time spent on a claim  
17 that is subject to this subsection and expenses incurred by the  
18 license holder, until the claim is paid or the insured receives a  
19 written commitment to pay from the insurance company.

20 Sec. 24. PROHIBITED CONDUCT. (a) A license holder may not,  
21 directly or indirectly, act within this state as a public insurance  
22 adjuster without having first entered into a contract, in writing,  
23 on a form approved by the commissioner, executed in duplicate by the  
24 license holder and the insured or the insured's authorized  
25 representative. One copy of the contract shall be kept on file by  
26 the license holder and must be available at all times for  
27 inspection, without notice, by the commissioner or the

1 commissioner's authorized representative.

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

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

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

18 (e) A license holder may not knowingly make any false report  
19 to the license holder's employer or client and may not divulge to  
20 any other person, except as the law may require, any information  
21 obtained except at the direction of the employer or the client for  
22 whom the information is obtained.

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

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

27 (1) advertise;

1           (2) solicit or engage clients;  
2           (3) furnish reports or present bills to clients; or  
3           (4) in any manner conduct business for which a license  
4 is required under this article.

5           (h) A license holder may not render legal advice to any  
6 person in the license holder's capacity as a public insurance  
7 adjuster.

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

11           (j) A license holder may not solicit or attempt to solicit  
12 business, directly or indirectly, on a bodily injury loss covered  
13 by a life, health, or accident insurance policy.

14           (k) A license holder may not, without the knowledge and  
15 written consent of the insured, acquire an interest in salvaged  
16 property that is the subject of a claim adjusted by the license  
17 holder.

18           (l) A license holder may not participate directly or  
19 indirectly in the reconstruction, repair, or restoration of damaged  
20 property that is the subject of a claim adjusted by the license  
21 holder or engage in any other activities that may reasonably be  
22 construed as presenting a conflict of interest, including  
23 soliciting or accepting any remuneration from, or having a  
24 financial interest in, any salvage firm, repair firm, or other firm  
25 that obtains business in connection with a claim the license holder  
26 has a contract or agreement to adjust.

27           (m) A license holder may not:



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

3           (2) advance money to a potential client or insured in  
4 order to obtain business;

5           (3) offer to pay a fee, commission, or other valuable  
6 consideration, exceeding \$100, to a person for referring a loss to  
7 the license holder unless the license holder employs the person for  
8 that purpose and the person is licensed to act as a public insurance  
9 adjuster under this article;

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

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

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

20           (1) the name of the insured;

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

22           (3) a copy of the contract between the license holder  
23 and the insured;

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

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

1           (6) the total compensation received for the  
2 adjustment; and

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

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

9           Sec. 26. FIDUCIARY CAPACITY. (a) All funds received as  
10 claim proceeds by a license holder acting as a public insurance  
11 adjuster are received and held by the license holder in a fiduciary  
12 capacity. A license holder who diverts or appropriates any  
13 fiduciary funds for the license holder's personal use is guilty of  
14 theft and is punishable for theft as provided by law.

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

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

27           Sec. 28. ADVERTISEMENTS. Each advertisement by a license

1 holder soliciting or advertising business must display the license  
2 holder's name, address, and license number as they appear in the  
3 records of the commissioner. The commissioner may adopt rules  
4 defining the term "advertisement" as used in this section.

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

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

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

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

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

18 (2) a cause that constitutes grounds for denial of an  
19 original license;

20 (3) wilful misrepresentation or fraud in obtaining a  
21 license;

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

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

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

27 (7) engaging in a fraudulent transaction;

1           (8) demonstrated incompetence or untrustworthiness in  
2 the conduct of the license holder's affairs under the license, as  
3 determined by the commissioner;

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

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

8           (b) If the department proposes to refuse to issue an  
9 original license under this article or to suspend, revoke, or  
10 refuse to renew a license under this article, the person affected is  
11 entitled to notice and hearing in the manner provided by Section  
12 3A(b), Article 21.01-2, of this code.

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

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

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

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

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

1 until the fifth anniversary of:

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

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

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

12 (1) pass the required written examination; or

13 (2) submit a properly completed license application.

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

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

26 Sec. 31. CEASE AND DESIST ORDER. If the commissioner  
27 believes that a person is engaging in acts or practices in violation

1 of Section 3(a) of this article, the commissioner may, without  
2 notice or hearing, issue and cause to be served on the person an  
3 order requiring the person to immediately cease and desist from  
4 engaging further in those acts or practices.

5 Sec. 32. AUTOMATIC FINES. The commissioner may impose an  
6 automatic fine in the manner prescribed by Section 5A, Article  
7 21.01-2, of this code for a violation of this article.

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

- 12 (1) a fine in an amount not to exceed \$1,000;  
13 (2) confinement in county jail for a term not to exceed  
14 six months; or  
15 (3) both the fine and confinement.

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

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

25 (b) The commissioner of insurance shall adopt the  
26 examination required by Section 9, Article 21.07-5, Insurance Code,  
27 as added by this Act, not later than January 1, 2004. Pending the

1 adoption of the examination, the commissioner may issue a temporary  
2 license to practice as a public insurance adjuster to an individual  
3 who satisfies all the requirements for issuance of the license  
4 except the examination requirement. A temporary license issued  
5 under this subsection expires June 1, 2004, and may not be renewed  
6 except as determined by the commissioner.

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

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

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