

A BILL TO BE ENTITLED

AN ACT

relating to the licensing of public insurance adjusters.

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

SECTION 1. Subchapter A, Chapter 21, Insurance Code, is amended by adding Article 21.07-5 to read as follows:

Art. 21.07-5. LICENSING OF PUBLIC ADJUSTERS

PART I. GENERAL PROVISIONS

Sec. 1.01. DEFINITIONS. In this article, "public adjuster" means an individual who:

(1) for compensation acts on behalf of an insured or aids the insured in any manner in negotiating for or effecting the settlement of a claim for loss or damage resulting from an accident or other occurrence covered under an insurance policy that insures against loss or damage to property; or

(2) advertises for or solicits employment as an adjuster of a claim described by Subdivision (1) of this section.

Sec. 1.02. GENERAL EXEMPTIONS. (a) This article does not apply to:

(1) an attorney who:

(A) adjusts insurance losses periodically and incidentally to the practice of law; and

(B) does not represent that the attorney is an adjuster;

(2) an adjuster licensed under Chapter 407, Acts of

1 the 63rd Legislature, Regular Session, 1973 (Article 21.07-4,
2 Vernon's Texas Insurance Code);

3 (3) a person employed only to furnish technical
4 assistance to a licensed public adjuster, including:

5 (A) an attorney;

6 (B) an engineer;

7 (C) an estimator;

8 (D) a handwriting expert;

9 (E) a photographer; and

10 (F) a private detective;

11 (4) an agent or general agent of an authorized insurer
12 who processes an undisputed or uncontested loss for the insurer
13 under a policy issued by the agent or general agent;

14 (5) a person who performs clerical duties and does not
15 negotiate with parties to disputed or contested claims;

16 (6) a person who handles claims arising under life,
17 accident, and health insurance policies;

18 (7) a person:

19 (A) who is employed principally as:

20 (i) a right-of-way agent; or

21 (ii) a right-of-way and claims agent;

22 (B) whose primary responsibility is the
23 acquisition of easements, leases, permits, or other real property
24 rights; and

25 (C) who handles only claims arising out of
26 operations under those easements, leases, permits, or other
27 contracts or contractual obligations; or

1 (8) an individual who is employed to investigate
2 suspected fraudulent insurance claims but who does not adjust
3 losses or determine claims payments.

4 (b) A nonresident public adjuster is not required to hold a
5 license under this chapter to:

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

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

9 (3) act as a temporary substitute for a licensed
10 public adjuster.

11 Sec. 1.03. TEMPORARY EXEMPTION. An individual who is
12 undergoing training as a public adjuster under the supervision of a
13 licensed public adjuster may act as a public adjuster for a period
14 not to exceed 12 months without having a license issued under this
15 chapter if, at the beginning of the period, the individual has been
16 registered with the commissioner as a trainee.

17 Sec. 1.04. RECIPROCITY. The department may waive any
18 license requirement imposed under this article for an applicant who
19 holds a license from another state if the state has license
20 requirements substantially equivalent to the requirements for a
21 license issued under this article.

22 Sec. 1.05. RULES. The commissioner may adopt rules
23 necessary to implement this article and to meet the minimum
24 requirements of federal law, including regulations.

25 Sec. 1.06. ADVISORY BOARD. (a) An advisory board shall
26 make recommendations to the commissioner regarding:

27 (1) the scope, time, and conduct of written

1 examinations under Part II of this article;

2 (2) the times and locations in this state where the
3 examinations are held; and

4 (3) any other matter the commissioner submits to the
5 advisory board for a recommendation.

6 (b) The advisory board is composed of nine members appointed
7 by the commissioner as follows:

8 (1) the presiding officer of the unauthorized practice
9 of law committee of the State Bar of Texas;

10 (2) four members who represent the public; and

11 (3) four members with knowledge and experience in the
12 profession of public adjusting.

13 (c) A member who represents the public may not be:

14 (1) a public adjuster, adjuster, agent, or broker;

15 (2) an officer, director, or employee of:

16 (A) an adjuster;

17 (B) a public adjuster;

18 (C) an agent;

19 (D) a broker;

20 (E) an insurance agency;

21 (F) an insurer; or

22 (G) any other business entity regulated by the
23 department;

24 (3) a person required to register as a lobbyist under
25 Chapter 305, Government Code; or

26 (4) a person related to a person described by
27 Subdivision (1), (2), or (3) of this subsection within the second

1 degree by affinity or the second degree by consanguinity.

2 (d) A member of the advisory board serves without
3 compensation. If authorized by the commissioner, an advisory board
4 member is entitled to reimbursement for reasonable expenses
5 incurred in attending meetings of the advisory board.

6 PART II. LICENSE REQUIREMENTS

7 Sec. 2.01. LICENSE REQUIRED. Except as otherwise provided
8 by this article, a person may not act as or represent that the
9 person is a public adjuster in this state unless the person holds a
10 license under this article.

11 Sec. 2.02. APPLICATION FOR LICENSE. (a) An applicant for a
12 license under this article must submit to the department an
13 application on a form prescribed and provided by the department and
14 include as part of or in connection with the application any
15 information that the department reasonably requires, including
16 information about the applicant's:

- 17 (1) identity;
18 (2) personal history;
19 (3) experience; and
20 (4) business record.

21 (b) The application must be accompanied by:
22 (1) the fee required by Section 2.07 of this article;
23 and

24 (2) the bond required by Section 2.12 of this article.

25 Sec. 2.03. QUALIFICATIONS; ISSUANCE. (a) To qualify for a
26 license under this article, an applicant must:

- 27 (1) comply with this article;

1 (2) present evidence satisfactory to the department
2 that the applicant:

3 (A) is at least 18 years of age;

4 (B) resides in this state or a state or country
5 that permits a resident of this state to act as a public adjuster in
6 that state or country;

7 (C) has complied with all federal laws relating
8 to employment or the transaction of business in the United States,
9 if the applicant does not reside in the United States;

10 (D) is trustworthy; and

11 (E) has had experience, special education, or
12 training of sufficient duration and extent regarding acting as a
13 public adjuster to make the applicant competent to fulfill the
14 responsibilities of a public adjuster; and

15 (3) pass an examination conducted under this part or
16 present evidence that the applicant has been exempted under Section
17 2.06 of this article.

18 (b) The commissioner shall issue a license to an applicant
19 who meets the qualifications prescribed by this section.

20 Sec. 2.04. EXAMINATION REQUIRED. (a) To be eligible for a
21 license under this article, an applicant must pass a written
22 examination of the applicant's qualifications and competency.

23 (b) The department may supplement a written examination
24 under Subsection (a) of this section with an oral examination.

25 (c) The commissioner shall prescribe each examination under
26 this section. An examination must be of sufficient scope to
27 reasonably test the applicant's knowledge relative to the kinds of

1 insurance that may be dealt with under the license and of:

2 (1) the duties of a licensed public adjuster; and

3 (2) the laws of this state that apply to a licensed
4 public adjuster.

5 (d) The commissioner may require a reasonable waiting
6 period before an applicant who fails to pass an examination is
7 eligible to be retested on a similar examination.

8 Sec. 2.05. EXAMINATION PROCEDURES. (a) The department
9 shall prepare and make available to applicants instructions
10 specifying in general terms the subjects that may be covered in an
11 examination required under Section 2.04 of this article.

12 (b) An examination under this part shall be given at times
13 and locations in this state necessary to reasonably serve the
14 convenience of the department and applicants.

15 Sec. 2.06. EXEMPTION FROM EXAMINATION REQUIREMENT. (a) An
16 applicant for a license under this article is not required to pass
17 an examination under Section 2.04 of this article to receive the
18 license if the applicant:

19 (1) had been principally engaged in the public
20 adjustment of losses on September 1, 2002, and can provide
21 documentation of public adjustment activities conducted since that
22 date;

23 (2) is applying for a renewal license under this
24 article;

25 (3) is licensed as a public adjuster in another state
26 with which a reciprocal agreement has been entered into by the
27 commissioner; or

1 (4) has completed a course in acting as a public
2 adjuster as prescribed and approved by the commissioner and it is
3 certified to the commissioner on completion of the course that the
4 applicant has:

5 (A) completed the course; and

6 (B) passed an examination testing the
7 applicant's knowledge and qualification, as prescribed by the
8 commissioner.

9 (b) An applicant seeking to claim an exemption under
10 Subsection (a)(4) of this section is responsible for the scheduling
11 and administration of the examination required under that
12 subsection.

13 Sec. 2.07. FEES. (a) Before issuing or renewing a license
14 under this article, the department shall set and collect a
15 nonrefundable license fee in an amount not to exceed \$50.

16 (b) An applicant for a renewal license whose license is
17 unexpired must remit the fee required by Subsection (a) of this
18 section biennially after the issuance of the original license. If
19 the applicant's license has been expired for not more than 90 days,
20 an applicant for a renewal license must remit, in addition to the
21 fee assessed under Subsection (a) of this section, a fee equal to
22 one-half of the original license fee.

23 (c) Before administering an examination under this part,
24 the department shall set and collect a nonrefundable examination
25 fee in an amount not to exceed \$50.

26 (d) Before issuing a duplicate license requested by a public
27 adjuster, the department shall set and collect a duplicate license

1 fee.

2 (e) The department shall deposit a fee collected under this
3 article to the credit of the Texas Department of Insurance
4 operating account.

5 Sec. 2.08. LICENSE FORM. (a) The commissioner shall
6 prescribe the form of a license issued under this article.

7 (b) A license must contain:

8 (1) the public adjuster's name;

9 (2) the address of the public adjuster's place of
10 business; and

11 (3) the date of issuance and the date of expiration of
12 the license.

13 Sec. 2.09. CONTINUING EDUCATION: GENERAL REQUIREMENTS. (a)
14 To renew a license under this article, a licensed public adjuster
15 must participate in a continuing education program relating to
16 consumer protection. The program must include education relating
17 to consumer protection laws, including:

18 (1) Article 21.21 of this code;

19 (2) Chapter 122, Acts of the 57th Legislature, Regular
20 Session, 1961 (Article 21.21-1, Vernon's Texas Insurance Code);

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

22 (4) Subchapter E, Chapter 17, Business & Commerce
23 Code; and

24 (5) any other similar laws specified by the
25 department.

26 (b) The department may certify continuing education
27 programs.

1 Sec. 2.10. CONTINUING EDUCATION: EXEMPTIONS AND WAIVERS.

2 (a) On written request of a licensed public adjuster and if the
3 department determines that the public adjuster is unable to comply
4 with continuing education requirements under this part because of
5 illness, medical disability, or another extenuating circumstance
6 beyond the control of the public adjuster, the department may:

7 (1) extend the time for the public adjuster to comply
8 with the continuing education requirements; or

9 (2) exempt the public adjuster from any of the
10 requirements for a licensing period.

11 (b) The commissioner by rule shall establish the criteria
12 for an extension or exemption under Subsection (a) of this section.

13 (c) The department may waive any continuing education
14 requirement imposed under this article for a nonresident public
15 adjuster who holds a license from another state if the state has
16 continuing education requirements substantially equivalent to the
17 requirements for a license issued under this article.

18 Sec. 2.11. EXPIRATION OF LICENSE; RENEWAL. Expiration and
19 renewal of a license issued under this article are governed by
20 Article 21.01-2 of this code.

21 Sec. 2.12. BOND REQUIREMENT. (a) Each applicant for an
22 original or renewal license under this article shall file with the
23 department proof of a fidelity bond, in an amount and form to be set
24 by the commissioner, executed by the applicant and by approved
25 corporate sureties.

26 (b) The commissioner shall set the amount of the bond
27 required by this section at an amount, not to exceed \$10,000, that

1 adequately protects the interests of the applicant's clients and
2 prospective clients.

3 (c) The bond required by this section may be used only for
4 the benefit of any person injured by a wilful, malicious, or
5 wrongful act by the applicant in connection with the transaction of
6 the applicant's business as a public adjuster.

7 PART III. SPECIAL LICENSES

8 Sec. 3.01. EMERGENCY LICENSE. (a) If a catastrophe or an
9 emergency arises out of a disaster, act of God, riot, civil
10 commotion, conflagration, or other similar occurrence, the
11 commissioner shall, on application, issue an emergency license to a
12 person if the application is certified to the commissioner not
13 later than the fifth day after the date on which the person begins
14 work as a public adjuster by a person who holds a license under this
15 chapter.

16 (b) The person who certifies an application under
17 Subsection (a) of this section is responsible for the practices of
18 the emergency license holder whom the person certifies.

19 (c) The commissioner may, after notice and hearing, revoke
20 an emergency license on grounds specified by Section 5.01 of this
21 article.

22 (d) An emergency license is effective for a period not to
23 exceed 90 days. The commissioner may extend the term of the
24 emergency license for an additional period of 90 days.

25 (e) The commissioner shall establish a fee for an emergency
26 license in an amount not to exceed \$20. A person issued an
27 emergency license shall remit the fee to the department not later

1 than the 30th day after the date on which the department issues the
2 license.

3 (f) The commissioner may issue an emergency license to an
4 applicant who meets the requirements of Subsection (a) of this
5 section regardless of whether the applicant is:

6 (1) a resident of this state; or

7 (2) an otherwise licensed adjuster or public adjuster.

8 Sec. 3.02. LIMITED LICENSE. (a) If considered necessary by
9 the commissioner, the department may issue a limited license to an
10 applicant in the manner otherwise provided for the issuance of a
11 license under this article.

12 (b) The license shall specifically limit the kinds of
13 insurance claims that may be handled by the person.

14 (c) The person may not adjust claims of a different kind
15 than that for which the public adjuster is specifically licensed.

16 PART IV. POWERS AND DUTIES OF PUBLIC ADJUSTER

17 Sec. 4.01. PLACE OF BUSINESS. (a) A licensed public
18 adjuster shall maintain a place of business that is:

19 (1) located at the place at which the public adjuster
20 principally conducts transactions under the license; and

21 (2) accessible to the public.

22 (b) A licensed public adjuster shall promptly notify the
23 commissioner if the public adjuster changes the location of the
24 public adjuster's place of business.

25 PART V. ENFORCEMENT

26 Sec. 5.01. GROUNDS FOR DISCIPLINARY ACTION. (a) The
27 commissioner may discipline a public adjuster or deny an

1 application for a license under this article in accordance with
2 Article 21.01-2 of this code.

3 (b) Department rules may specify grounds for discipline
4 that are comparable to grounds for discipline of other license
5 holders under this chapter.

6 Sec. 5.02. REINSTATEMENT OR REISSUANCE OF LICENSE. The
7 commissioner may not reinstate or reissue the license of a license
8 holder or former license holder whose license has been suspended,
9 revoked, or refused renewal until the commissioner determines that
10 the cause for a suspension, revocation, or refusal of a license
11 issued under this article no longer exists.

12 Sec. 5.03. EFFECT OF VIOLATION. The department may impose
13 sanctions, issue emergency cease and desist orders, and impose
14 administrative penalties as authorized by Chapters 82, 83, and 84
15 of this code, as appropriate, for a violation of this article.

16 SECTION 2. Section 3, Article 21.01, Insurance Code, is
17 amended to read as follows:

18 Sec. 3. APPLICATION. Except as otherwise provided by this
19 code, this subchapter applies to each person licensed in accordance
20 with:

21 (1) Subchapter E, Chapter 981 [~~Section 4, Article~~
22 ~~1.14-2~~], of this code;

23 (2) Subchapter D, Chapter 1152 [~~Section 7, Article~~
24 ~~3.75~~], of this code;

25 (3) Subsection (c), Article 5.13-1, of this code;

26 (4) Subchapter H, Chapter 885, [~~Article 10.37-3~~] of
27 this code;

- 1 (5) Section 911.251 [~~Article 16.24A~~] of this code;
- 2 (6) Section 912.251 [~~9, Article 17.25,~~] of this code;
- 3 (7) Article 21.07 of this code;
- 4 (8) Article 21.07-1 of this code;
- 5 (9) Chapter 29, Acts of the 54th Legislature, Regular
6 Session, 1955 (Article 21.07-2, Vernon's Texas Insurance Code);
- 7 (10) the Managing General Agents' Licensing Act
8 (Article 21.07-3, Vernon's Texas Insurance Code);
- 9 (11) Chapter 407, Acts of the 63rd Legislature,
10 Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance
11 Code);
- 12 (12) Article 21.07-6 of this code;
- 13 (13) Article 21.07-7 of this code;
- 14 (14) Article 21.09 of this code;
- 15 (15) Article 21.11 of this code;
- 16 (16) Article 21.14 of this code;
- 17 (17) Article 21.14-1 of this code;
- 18 (18) Article 21.14-2 of this code; [~~or~~]
- 19 (19) Article 23.23A of this code; or
- 20 (20) Article 21.07-5 of this code.

21 SECTION 3. (a) The commissioner of insurance shall appoint
22 the members of the advisory board created under Section 1.06,
23 Article 21.07-5, Insurance Code, as added by this Act, not later
24 than October 31, 2003.

25 (b) The commissioner of insurance shall adopt the
26 examination required by Section 2.04, Article 21.07-5, Insurance
27 Code, as added by this Act, not later than March 1, 2004. Pending

1 the adoption of the examination, the commissioner may issue a
2 temporary license to practice as a public 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 SECTION 4. (a) Except as provided by Subsection (b) of this
7 section, this Act takes effect September 1, 2003.

8 (b) Sections 2.01 and 5.03, Article 21.07-5, Insurance
9 Code, as added by this Act, take effect January 1, 2004.