

A BILL TO BE ENTITLED

AN ACT

relating to the handling, settling, and use of certain claims in the insurance business; providing penalties.

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

ARTICLE 1. WATER DAMAGE CLAIMS

SECTION 1.01. Subchapter C, Chapter 5, Insurance Code, is amended by adding Article 5.35-4 to read as follows:

Art. 5.35-4. RESTRICTIONS ON USE OF CLAIMS HISTORY FOR WATER DAMAGE; PERMISSIBLE SURCHARGES

Sec. 1. PURPOSE. The purpose of this article is to protect persons and property from being unfairly stigmatized in obtaining residential property insurance by the filing of a water damage claim or claims under a residential property insurance policy.

Sec. 2. DEFINITIONS. In this article:

(1) "Appliance" means a household device operated by gas or electric current, including hoses directly attached to the appliance. The term includes but is not limited to air conditioning units, heating units, refrigerators, dishwashers, icemakers, clothes washers, clothes dryers, stoves, ovens, water heaters, food warmers, trash compactors, and disposers.

(2) "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual, capital stock company, county mutual insurance company, farm mutual insurance company, association, Lloyd's plan company, or other entity writing

1 residential property insurance in the state. The term includes an
2 affiliate as described by Section 2, Article 21.49-1 of this code,
3 or Section 823.003(a) of this code if that affiliate is authorized
4 to write and is writing residential property insurance in the
5 state. The term does not include the Texas Windstorm Insurance
6 Association created and operated under Article 21.49 of this code
7 or the FAIR Plan created and operated under Article 21.49A of this
8 code.

9 (3) "Residential property insurance" means insurance
10 against loss to residential real property at a fixed location or
11 tangible personal property provided in a homeowners policy, which
12 includes a tenant policy, a condominium owners policy, or a
13 residential fire and allied lines policy.

14 (4) "Underwriting guideline" means a rule, standard,
15 guideline, or practice, whether written, oral, or electronic, that
16 is used by an insurer or an agent of an insurer to decide whether to
17 accept or reject an application for a residential property
18 insurance policy or to determine how to classify the risks that are
19 accepted for the purpose of determining a rate.

20 Sec. 3. RESTRICTIONS ON USE OF CLAIMS HISTORY FOR WATER
21 DAMAGES. (a) Underwriting guidelines relating to a water damage
22 claim or claims used by an insurer shall be governed by rules
23 adopted by the commissioner in accordance with the purpose of this
24 article. An insurer may not use an underwriting guideline relating
25 to a water damage claim or claims that is not in accordance with the
26 rules adopted by the commissioner under this article. An insurer
27 may not use appliance-related claims that have been repaired by

1 generally prudent and acceptable repair methods as underwriting
2 guidelines unless more than three appliance-related claims were
3 filed in the preceding three years.

4 (b) An insurer shall file with the department its
5 underwriting guidelines relating to a water damage claim or claims
6 in accordance with the rules adopted by the commissioner.

7 Sec. 4. PREMIUM SURCHARGES FOR WATER DAMAGE CLAIMS.

8 (a) An insurer may assess a premium surcharge for water damage
9 claims that are not repaired appliance-related claims at the time a
10 residential property insurance policy is issued in accordance with
11 rules adopted by the commissioner. This surcharge shall be in
12 addition to the premium that would be charged for the policy had the
13 claim or claims not occurred. The commissioner shall determine by
14 rule the amount of any surcharge that may be assessed under this
15 subsection, except that the amount of the surcharge may not exceed
16 15 percent of the total premium that would be charged for the policy
17 had the claim or claims not occurred. The insurer may continue to
18 assess this premium surcharge for such period as the commissioner
19 determines by rule.

20 (b) The insurer may at the time of renewal of the policy
21 assess an additional premium surcharge for water damage claims that
22 are not repaired appliance-related claims made in the preceding
23 policy year as determined by the commissioner by rule. This
24 surcharge shall be in addition to the premium that would be charged
25 for the policy had the claim or claims not occurred and shall be in
26 addition to the surcharge adopted by the commissioner under
27 Subsection (a) of this section. The commissioner shall determine

1 by rule the amount of any surcharge that may be assessed under this
2 subsection, except that the amount of the surcharge may not exceed
3 15 percent of the total premium that would be charged for the policy
4 had the claim or claims not occurred, excluding the amount of the
5 surcharge provided in Subsection (a) of this section. The insurer
6 may continue to assess this premium surcharge for such period as the
7 commissioner determines by rule.

8 (c) The commissioner may authorize a surcharge as provided
9 in Subsection (a) or (b) of this section that is greater than 15
10 percent for risks with three or more water damage claims in
11 accordance with rules adopted by the commissioner.

12 (d) In determining the surcharges under this section, the
13 commissioner may consider the number of water damage claims, the
14 type of water damage claims, and the total amount paid for water
15 damage claims.

16 Sec. 5. RULEMAKING AUTHORITY. The commissioner shall adopt
17 rules to accomplish the purposes of this article, including rules
18 with regard to the definition of a water damage claim and repaired
19 appliance-related claims.

20 SECTION 1.02. Article 5.35-4, Insurance Code, as added by
21 this article, applies only to a residential property insurance
22 policy that is delivered or issued for delivery based on an
23 application that is submitted on or after the effective date of this
24 Act.

25 ARTICLE 2. CLAIMS HANDLING PROCEDURES AND TIME FRAMES

26 SECTION 2.01. Article 21.55, Insurance Code, is amended by
27 adding Section 9 to read as follows:

Sec. 9. MINIMUM STANDARDS; RULEMAKING AUTHORITY.

(a) Sections 2 and 3 of this article provide minimum standards for notice of claims and the acceptance or rejection of claims.

(b) The commissioner may adopt rules that identify the types of claims requiring more prompt, efficient, and effective notice, acceptance or rejection, and processing and handling procedures, including commencement of the investigation, other than those specified in Sections 2 and 3 of this article. The commissioner by rule may regulate for such claims:

(1) notice;

(2) acceptance or rejection;

(3) claims handling and processing procedures and time frames;

(4) investigation procedures and time frames and requirements for action to be taken before, during, and after investigation;

(5) settlement; and

(6) other aspects of claims response, handling, and processing determined relevant and necessary by the commissioner.

(c) Any rules adopted under this section supersede the minimum standards described in Sections 2 and 3 of this article for the types of claims identified by the commissioner under Subsection (b) of this section.

(d) The purpose of any rules adopted under this section is to ensure a more timely response to claimants with certain types of claims identified by the commissioner, reduce claimants' confusion and inconvenience, reduce claims costs, and mitigate losses.

1 ARTICLE 3. LICENSING OF PUBLIC INSURANCE ADJUSTERS

2 SECTION 3.01. Subsection (b), Section 1, Chapter 407, Acts
3 of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4,
4 Vernon's Texas Insurance Code), is amended to read as follows:

5 (b) "Adjuster" shall not include:

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

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

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

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

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

21 (6) any person who handles claims arising under life,
22 accident and health insurance policies;

23 (7) a person who is employed principally as a
24 right-of-way agent or right-of-way and claims agent and whose
25 primary responsibility is the acquisition of easements, leases,
26 permits, or other real property rights and whose claims handling
27 arises out of operations under those easements, leases, permits, or

1 other contracts or contractual obligations; [~~or~~]

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

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

7 SECTION 3.02. Subchapter A, Chapter 21, Insurance Code, is
8 amended by adding Article 21.07-5 to read as follows:

9 Art. 21.07-5. PUBLIC INSURANCE ADJUSTERS

10 Sec. 1. DEFINITIONS. In this article:

11 (1) "Licensee" means an individual licensed under this
12 article as a public insurance adjuster.

13 (2) "Person" includes an individual, firm, company,
14 association, organization, partnership, limited liability company,
15 or corporation.

16 (3) (A) "Public insurance adjuster" means:

17 (i) an individual who, for compensation:

18 (a) acts on behalf of an insured in
19 negotiating for or effecting the settlement of a claim or claims for
20 loss or damage under any policy of insurance covering real or
21 personal property; or

22 (b) on behalf of any other public
23 insurance adjuster, investigates, settles, or adjusts or advises or
24 assists an insured with a claim or claims for loss or damage under
25 any policy of insurance covering real or personal property; or

26 (ii) an individual who advertises, solicits
27 business, or holds himself or herself out to the public as an

1 adjuster of claims for loss or damage under any policy of insurance
2 covering real or personal property.

3 (B) "Public insurance adjuster" does not
4 include:

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

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

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

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

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

21 (vi) photographers, estimators, appraisers,
22 engineers, and arbitrators who are employed by a public insurance
23 adjuster exclusively for the purpose of furnishing technical
24 assistance to the licensed public insurance adjuster; or

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

1 Sec. 2. NOT LAW LICENSE. Nothing in this article shall be
2 construed as entitling any person who is not licensed by the Supreme
3 Court of Texas to practice law in the state.

4 Sec. 3. LICENSE REQUIRED; EXEMPTION. (a) A person may not
5 act as a public insurance adjuster in this state or hold himself or
6 herself out to be a public insurance adjuster in this state, unless
7 the person holds a license issued by the commissioner under Section
8 5, Section 15, or Section 16 of this article.

9 (b) A license is not required for:

10 (1) an attorney licensed to practice law in this state
11 who has complied with Section 5(6)(A) and (B) of this article; or

12 (2) a person licensed as a general property and
13 casualty agent under Article 21.14 of this code while acting for an
14 insured concerning a loss under a policy issued by that agent.

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

22 (d) If the commissioner believes that a person is engaging
23 in acts or practices in violation of Subsection (a) of this section,
24 the commissioner ex parte may issue an emergency cease and desist
25 order, in accordance with Subchapter B, Chapter 83 of this code,
26 requiring the person to immediately cease and desist from engaging
27 further in the acts or practices.

1 Sec. 4. APPLICATION FOR LICENSE. (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 a license application fee, as provided by Section 11
6 of this article, for each application submitted. The application
7 fee is nonrefundable.

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

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

14 (2) is a citizen of the United States or has complied
15 with all federal laws pertaining to employment or to the
16 transaction of business in the United States;

17 (3) is a resident of the state;

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

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

26 (6) has sufficient experience or training relating to
27 the assessment of:

1 (A) real and personal property values; and

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

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

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

13 (9) has successfully passed the license examination
14 prescribed under Section 8 of this article or is exempt from the
15 examination requirement under this article;

16 (10) has complied with the financial responsibility
17 requirements imposed under Section 6 of this article; and

18 (11) has complied with any other requirements under
19 applicable state law, including providing a complete set of
20 fingerprints on request as provided by Article 1.10C of this code.

21 Sec. 6. FINANCIAL RESPONSIBILITY REQUIREMENTS. (a) As a
22 continuing condition of licensure, a public insurance adjuster must
23 file proof of financial responsibility with respect to transactions
24 with insureds under this article in an amount determined by the
25 commissioner by rule. The financial responsibility shall include
26 the ability to pay sums the public insurance adjuster is obligated
27 to pay under any judgment against the public insurance adjuster by

1 an insured, based on an error, omission, fraud, negligent act, or
2 unfair practice of the public insurance adjuster or any person for
3 whose acts the public insurance adjuster is legally liable in the
4 transaction of the public insurance adjuster's business under this
5 code. In determining the amount of the financial responsibility
6 requirement, the commissioner shall consider the nature of the
7 obligation, other financial security requirements under this code,
8 and financial security requirements adopted for public insurance
9 adjusters in other states. In determining the types of financial
10 responsibility required, the commissioner may consider a surety
11 bond or a professional liability policy or similar policy or
12 contract of professional liability coverage acceptable to the
13 commissioner.

14 (b) In addition to any other remedy available under this
15 code, if the commissioner believes that a person is committing a
16 violation by failing to maintain the financial responsibility
17 requirements of this section, the commissioner ex parte may issue
18 an emergency cease and desist order and suspend the person's
19 license, in accordance with Subchapter B, Chapter 83 of this code,
20 requiring the person to immediately cease and desist from engaging
21 in the activities of a public insurance adjuster.

22 (c) A license suspended under Subsection (b) of this section
23 may be reinstated on the approval of an application for
24 reinstatement filed with the commissioner, in the form prescribed
25 by the commissioner, with proof that the financial responsibility
26 requirements of this section have been met. The commissioner may
27 deny the application for reinstatement:

1 (1) for any reason that would justify a refusal to
2 issue, or a suspension or revocation of, a license; or

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

7 Sec. 7. LICENSE AUTHORIZATION. A license issued under
8 Section 5 or Section 15 of this article authorizes the adjusting of
9 claims on behalf of insureds for fire and allied coverages,
10 burglary, flood, and all other property claims, both real and
11 personal, including loss of income, but only when the client is an
12 insured under the insurance policy.

13 Sec. 8. EXAMINATION FOR LICENSE; ADVISORY COMMITTEE.

14 (a) Each applicant for a license as a public insurance adjuster
15 must, before the issuance of the license, personally take and pass
16 an examination to the satisfaction of the commissioner.

17 (b) The examination required by this section must be
18 prescribed by the commissioner and must be of sufficient scope to
19 reasonably test the applicant's:

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

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

24 (3) knowledge of:

25 (A) Article 21.21 of this code;

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

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

2 (D) Article 21.55 of this code;

3 (E) the Deceptive Trade Practices-Consumer
4 Protection Act (Subchapter E, Chapter 17, Business & Commerce
5 Code);

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

8 (G) statutory provisions related to the
9 unauthorized practice of law contained in Subchapter G, Chapter 81,
10 Government Code; and

11 (H) the duties and responsibilities of public
12 insurance adjusters under the law.

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

25 (d) The commissioner shall, within a reasonable period not
26 to exceed 30 days after the date of the examination, transmit the
27 results of the examination and the action taken on the application

1 to the applicant.

2 (e) An examination is not required for the renewal of a
3 license issued under Section 5 or Section 15 of this article.

4 Sec. 9. EXAMINATION; FORM; TIME. (a) The answers of the
5 applicant to an examination required under this article shall be
6 made by the applicant in writing. A written examination may be
7 supplemented by oral examination.

8 (b) The examination shall be given at such times and places
9 within the state as the commissioner deems necessary to reasonably
10 serve the convenience of both the commissioner and applicants.

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

14 (d) The scheduling and administration of examinations
15 required under Section 8 of this article shall be effected by
16 persons approved by the commissioner.

17 Sec. 10. FORM OF LICENSE. The commissioner shall prescribe
18 the form of the licenses issued under Section 5 or Section 15 of
19 this article, which must contain:

20 (1) the name of the public insurance adjuster and the
21 address of the public insurance adjuster's place of business;

22 (2) the date of issuance and the date of expiration of
23 the license; and

24 (3) the name of the firm, if any, with whom the public
25 insurance adjuster is employed at the time the license is issued.

26 Sec. 11. FEE FOR LICENSE, RENEWAL, AND EXAMINATION.

27 (a) The commissioner shall collect in advance the following

1 nonrefundable fees:

2 (1) for a public insurance adjuster license, an
3 application fee in an amount to be determined by rule by the
4 commissioner;

5 (2) for a nonresident public insurance adjuster
6 license, an application fee in an amount to be determined by rule by
7 the commissioner;

8 (3) for each public insurance adjuster examination, a
9 fee in an amount to be determined by rule by the commissioner; and

10 (4) for a public insurance adjuster trainee
11 certificate under Section 16 of this article, a registration fee in
12 an amount to be determined by rule by the commissioner.

13 (b) The amount of the fee for the renewal of a license or a
14 certificate issued under this article shall be determined by rule
15 by the commissioner.

16 Sec. 12. USE OF FEES COLLECTED. (a) When collected, the
17 fees authorized by this article shall be deposited with the
18 comptroller to the credit of the Texas Department of Insurance
19 operating account.

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

1 person considered necessary in gathering information and evidence
2 and may have that information and evidence reduced to writing if
3 considered necessary, and all related expenses shall be paid from
4 the fees.

5 (c) The commissioner shall set the fees in amounts
6 reasonable and necessary to implement this article.

7 Sec. 13. PLACE OF BUSINESS; AGENT FOR SERVICE OF PROCESS.

8 (a) Each licensee who is a resident of the state shall maintain a
9 place of business in the state that is accessible to the general
10 public and maintain in the place of business the records required by
11 this article. The address of the place of business must appear on
12 the face of the license. The licensee shall promptly notify the
13 commissioner of any change in the address of the licensee's place of
14 business.

15 (b) Each nonresident licensee shall maintain an agent in the
16 state for service of process. The name and address of the
17 nonresident licensee's out-of-state business address and the name
18 and address of the agent must appear on the face of the license. The
19 licensee shall promptly notify the department of any change in the
20 address of the licensee's place of business or in the agent for
21 service of process.

22 (c) A license issued under this article must at all times be
23 posted in a conspicuous place in the principal place of business of
24 the licensee.

25 Sec. 14. LICENSE NOT ASSIGNABLE. A license issued under
26 this article is not assignable.

27 Sec. 15. NONRESIDENT LICENSE. (a) The commissioner may

1 issue a nonresident license to an applicant for a public insurance
2 adjuster license who is not a permanent resident of the state on
3 determining that the application meets the requirements of this
4 article, that the nonresident license application fee has been
5 paid, and that the applicant is an individual who:

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

7 (2) has passed, to the satisfaction of the
8 commissioner, an examination approved by the commissioner and of
9 sufficient scope as prescribed in Section 8 of this article,
10 provided, however, that the requirement for such an examination
11 does not apply to:

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

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

23 (3) 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;

26 (4) is trustworthy and of a moral character that
27 reasonably ensures that the applicant will conduct the business of

1 a public insurance adjuster fairly and in good faith without
2 detriment to the public;

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

7 (6) has sufficient experience or training relating to
8 the assessment of:

9 (A) real and personal property values; and

10 (B) physical loss of or damage to real or
11 personal property that may be the subject of insurance and claims
12 under insurance;

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

16 (8) possesses knowledge and experience adequate to
17 enable the applicant to engage in the business of a public insurance
18 adjuster fairly and without injury to the public or any member of
19 the public with whom the applicant may have business as a public
20 insurance adjuster;

21 (9) if currently licensed as a resident public
22 insurance adjuster in the applicant's state of residence, provides
23 with the application a certificate or letter of authorization from
24 the licensing authority of the applicant's state of residence,
25 stating that the applicant holds a current or comparable license to
26 act as a public insurance adjuster; the certificate or letter must
27 be signed by the appropriate licensing official of the applicant's

1 state of residence and must disclose whether the applicant has ever
2 had any license or eligibility to hold any license declined,
3 denied, suspended, or revoked and whether the applicant has ever
4 been placed on probation and whether an administrative fine or
5 penalty has been levied against the applicant and, if so, the reason
6 for the action;

7 (10) if the applicant's state of residence does not
8 require licensure as a resident public insurance adjuster and the
9 applicant has been licensed as an adjuster, agent, broker, or other
10 insurance representative in the applicant's state of residence or
11 any other state within the past three years, provides with the
12 application a certificate or letter of authorization from the
13 licensing authority stating that the applicant holds or has held a
14 license to act as an adjuster, agent, broker, or other insurance
15 representative; the certificate or letter must be signed by the
16 appropriate licensing official and must disclose whether the
17 applicant has ever had any license or eligibility to hold any
18 license declined, denied, suspended, or revoked and whether the
19 applicant has ever been placed on probation and whether an
20 administrative fine or penalty has been levied against the
21 applicant and, if so, the reason for the action;

22 (11) files proof of financial responsibility in
23 accordance with Section 6 of this article;

24 (12) pays the application fee required by Section 11
25 of this article; and

26 (13) complies with any other requirements under
27 applicable state law, including providing a complete set of

1 fingerprints on request as provided by Article 1.10C of this code.

2 (b) A nonresident licensee shall comply with all of the
3 requirements of this article in performing any of the activities of
4 a public insurance adjuster in this state, including the
5 requirements on record maintenance in Section 24 of this article.
6 The failure of a nonresident licensee, as determined by the
7 commissioner after notice and an opportunity for a hearing, to
8 properly maintain records in accordance with this article and make
9 them available to the department on request constitutes grounds for
10 the suspension of the nonresident license issued under this
11 article, in accordance with Section 30 of this article.

12 (c) Each individual who holds a nonresident license shall
13 comply with all other laws and rules of this state applicable to
14 public insurance adjusters, including the law governing the
15 collection of state sales tax as appropriate for services performed
16 under this article.

17 (d) After licensure as a nonresident public insurance
18 adjuster, as a condition of doing business in this state, the
19 licensee must annually, not later than January 1 and on a form
20 prescribed by the commissioner, submit an affidavit certifying that
21 the licensee is familiar with and understands the laws specified in
22 Section 8 of this article, the applicable rules adopted under those
23 laws, and the terms and conditions of the types of insurance
24 contracts that provide coverage on real and personal property.
25 Compliance with the filing requirement provided by this subsection
26 is necessary to the issuance, continuation, reinstatement, or
27 renewal of a nonresident public insurance adjuster license.

1 (e) A nonresident licensee is subject to Section 6(b) of
2 this article, relating to failure to maintain the financial
3 responsibility requirements.

4 Sec. 16. REGISTRATION PROGRAM FOR TRAINEES. (a) A public
5 insurance adjuster trainee must register with the department for a
6 temporary certificate under this section. An applicant for a
7 temporary certificate as a trainee must apply to the commissioner
8 on a form prescribed by the commissioner. The form must be
9 accompanied by a nonrefundable registration fee as prescribed by
10 Section 11(a)(4) of this article.

11 (b) A temporary certificate may be issued under this section
12 only for educational and training purposes. The holder of a
13 temporary certificate may practice only under the direction and
14 sponsorship of a licensee of this state.

15 (c) The sponsor of a public insurance adjuster trainee shall
16 attest, on a form prescribed by the commissioner, that the trainee
17 is under the supervision and control of the sponsor and that the
18 sponsor has met the financial responsibility requirements of
19 Section 6 of this article.

20 (d) A temporary certificate expires on the 180th day after
21 the date of issuance and may be renewed once on application to the
22 commissioner. An individual is not entitled to hold more than two
23 consecutive temporary certificates.

24 (e) Each individual who holds a temporary certificate under
25 this section must comply with the financial responsibility
26 requirements imposed under Section 6 of this article.

27 Sec. 17. CONDUCT TO COMPLY WITH CONTRACT. A licensee shall

1 prepare each claim for an insured represented by the licensee in
2 accordance with the terms and conditions of the contract of
3 insurance under which recovery is sought.

4 Sec. 18. CODE OF ETHICS. The commissioner, with guidance
5 from the public insurance adjusters examination advisory
6 committee, by rule shall 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 deems necessary and reasonable.

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

21 Sec. 20. LICENSE RENEWAL. (a) A license issued under this
22 article expires on the second anniversary of the date of issuance
23 unless suspended or revoked by the commissioner. A licensee may
24 renew a license that has not expired and has not been suspended or
25 revoked by filing with the department a properly completed renewal
26 application, in the form prescribed by the commissioner, that
27 demonstrates continued compliance with the license requirements

1 imposed under this article or adopted by rule by the commissioner.

2 The completed renewal application must be accompanied by:

3 (1) a renewal fee in the amount determined by the
4 commissioner under Section 11(b) of this article; and

5 (2) evidence of compliance with the continuing
6 education requirements imposed under Section 21 of this article.

7 (b) A licensee must submit the completed renewal
8 application, evidence of compliance with the continuing education
9 requirements, and the renewal fee to the commissioner not later
10 than the 30th day before the second anniversary date of the license.

11 The original license continues in force until:

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

13 (2) the commissioner issues an order revoking the
14 license.

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

21 (d) A person whose license has been expired for more than 90
22 days but less than one year may not renew the license but is
23 entitled to a new license without taking the applicable examination
24 if the person submits to the department a new application, evidence
25 of compliance with the continuing education requirements, the
26 license fee, and an additional fee equal to one-half of the license
27 fee.

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

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

12 (g) At least 30 days before the expiration of a license, the
13 department shall send written notice of the impending license
14 expiration to the licensee at the licensee's last known mailing
15 address according to the records of the department.

16 Sec. 21. CONTINUING EDUCATION REQUIREMENT. (a) Each
17 licensee must annually complete at least 15 hours of continuing
18 education courses. The commissioner by rule shall prescribe the
19 requirements for continuing education courses under this section.

20 (b) Notwithstanding Subsection (a) of this section, the
21 commissioner may waive any continuing education requirement for a
22 nonresident public insurance adjuster with a valid license from
23 another state having continuing education requirements
24 substantially equivalent to those of this state.

25 Sec. 22. COMMISSION. (a) Except as provided by Subsection
26 (b) of this section, a licensee may receive a commission for service
27 provided under this article consisting of an hourly fee, a flat

1 rate, a percentage of the total amount paid by an insurer to resolve
2 a claim, or another method of compensation. The total commission
3 received may not exceed 10 percent of the amount of the insurance
4 settlement on the claim.

5 (b) A licensee may not receive a commission consisting of a
6 percentage of the total amount paid by an insurer to resolve a claim
7 on a claim on which the insurer, not later than 72 hours after the
8 date on which the loss is reported to the insurer, either pays or
9 commits in writing to pay to the insured the policy limit of the
10 insurance policy in accordance with Article 6.13 or Section 862.053
11 of this code. The licensee is entitled to reasonable compensation
12 from the insured for services provided by the licensee on behalf of
13 the insured, based on the time spent on a claim that is subject to
14 this subsection and expenses incurred by the licensee, until the
15 claim is paid or the insured receives a written commitment to pay
16 from the insurer.

17 (c) Except for the payment of a commission by the insured,
18 all persons paying any proceeds of a policy of insurance or making
19 any payment affecting an insured's rights under a policy of
20 insurance must:

21 (1) include the insured as a payee on the payment draft
22 or check; and

23 (2) require the written signature and endorsement of
24 the insured on the payment draft or check.

25 (d) A public insurance adjuster may not accept any payment
26 that violates Subsection (c) of this section.

27 (e) Notwithstanding any authorization the insured may have

1 given to a public insurance adjuster, a public insurance adjuster
2 may not sign and endorse any payment draft or check on behalf of an
3 insured.

4 Sec. 23. PROHIBITED CONDUCT. (a) A licensee may not,
5 directly or indirectly, act within this state as a public insurance
6 adjuster without having first entered into a contract, in writing,
7 on a form approved by the commissioner, executed in duplicate by the
8 licensee and the insured or the insured's duly authorized
9 representative. One copy of the contract shall be kept on file in
10 the state by the licensee and must be available at all times for
11 inspection, without notice, by the commissioner or the
12 commissioner's duly authorized representative.

13 (b) A licensee may not solicit or attempt to solicit a
14 client for employment during the progress of a loss-producing
15 natural disaster occurrence.

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

23 (d) A licensee may not use any form of contract that is not
24 approved by the commissioner. The contract must contain a
25 provision allowing the client to rescind the contract by written
26 notice to the licensee within 72 hours of signature and must include
27 a notice in 12-point boldface type, prominently displayed, the

1 statement: "WE REPRESENT THE INSURED ONLY." The commissioner by
2 rule may require additional prominently displayed notice
3 requirements in the contract as the commissioner deems necessary.

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

9 (f) A licensee may not use a badge in connection with the
10 official activities of the licensee's business.

11 (g) A licensee may not permit an employee or agent, in the
12 employee's or agent's own name, to advertise, solicit or engage
13 clients, furnish reports or present bills to clients, or in any
14 manner conduct business for which a license is required under this
15 article.

16 (h) A licensee may not render services or perform acts that
17 constitute the practice of law, including the giving of legal
18 advice to any person in the licensee's capacity as a public
19 insurance adjuster.

20 (i) A licensee may not represent an insured on a claim or
21 charge a fee to an insured while representing the insurance carrier
22 against which the claim is made.

23 (j) A licensee may not solicit or attempt to solicit
24 business, directly or indirectly, or act in any manner on a bodily
25 injury loss covered by a life, health, or accident insurance policy
26 or on any claim for which the client is not an insured under the
27 insurance policy.

1 (k) A licensee may not, without the knowledge and consent of
2 the insured in writing, acquire an interest in salvaged property
3 that is the subject of a claim adjusted by the licensee.

4 (l) A licensee may not participate directly or indirectly in
5 the reconstruction, repair, or restoration of damaged property that
6 is the subject of a claim adjusted by the licensee or engage in any
7 other activities that may reasonably be construed as presenting a
8 conflict of interest, including soliciting or accepting any
9 remuneration from, or having a financial interest in, any salvage
10 firm, repair firm, or other firm that obtains business in
11 connection with any claim the licensee has a contract or agreement
12 to adjust.

13 (m) A licensee may not:

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

16 (2) advance money to any potential client or insured;

17 (3) pay, allow, or give, or offer to pay, allow, or
18 give, directly or indirectly, to a person who is not a licensed
19 public insurance adjuster a fee, commission, or other valuable
20 consideration for the referral of an insured to the public
21 insurance adjuster based on the insured entering into a contract
22 with that public insurance adjuster; a licensee may not otherwise
23 offer to pay a fee, commission, or other valuable consideration,
24 exceeding \$100, to a person not licensed as a public insurance
25 adjuster for referring an insured to the licensee;

26 (4) use any letterhead, advertisement, or other
27 printed matter, or use any other means, to represent that the

1 licensee is an instrumentality of the federal government, of a
2 state, or of a political subdivision of a state; or

3 (5) use a name different from that under which the
4 licensee is currently licensed in an advertisement, solicitation,
5 or contract for business.

6 Sec. 24. RECORD MAINTENANCE. (a) A licensee shall keep a
7 complete record in the state of each of the licensee's transactions
8 as a public insurance adjuster. The records shall include all of
9 the following:

10 (1) the name of the insured;

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

12 (3) a copy of the contract between the licensee and the
13 insured;

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

16 (5) an itemized statement of the recoveries by the
17 insured from the sources known to the licensee;

18 (6) the total compensation received for the
19 adjustment; and

20 (7) an itemized statement of disbursements made by the
21 licensee from recoveries received on behalf of the insured.

22 (b) Records required to be kept under this section shall be
23 maintained in the state for at least five years after the
24 termination of a transaction with the insured and must be open to
25 examination by the commissioner.

26 Sec. 25. FIDUCIARY CAPACITY. (a) All funds received as
27 claim proceeds by a licensee acting as a public insurance adjuster

1 are received and held by the licensee in a fiduciary capacity. A
2 licensee who diverts or appropriates any fiduciary funds for the
3 licensee's personal use is guilty of theft and is punishable for
4 theft as provided by law.

5 (b) An applicant for a license to act as a public insurance
6 adjuster must, as part of the application, endorse an authorization
7 for disclosure to the commissioner of all financial records of any
8 funds the public insurance adjuster holds as a fiduciary. The
9 authorization shall continue in force and effect for as long as the
10 licensee continues to be licensed under this article.

11 Sec. 26. NOTICE TO LAST ADDRESS. Notice by registered mail,
12 return receipt requested, sent to the last known address of an
13 applicant for a license, licensee, or other person to whom notice is
14 required to be sent under this article, as reflected by the records
15 of the department, constitutes sufficient notice under this
16 article.

17 Sec. 27. RELOCATION TO ANOTHER STATE. (a) Not later than
18 the 30th day after moving from one state to another state, a
19 nonresident or resident public insurance adjuster licensed in this
20 state shall file with the department:

21 (1) the licensee's new address; and

22 (2) proof of authorization to engage in the business
23 of public insurance adjuster in the new state of residence if that
24 state requires licensure of public insurance adjusters.

25 (b) The department may not charge a fee or require a license
26 application under Subsection (a) of this section.

27 Sec. 28. ADVERTISEMENTS. Every advertisement by a licensee

1 soliciting or advertising business must display the licensee's
2 name, address, and license number as they appear in the records of
3 the commissioner.

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

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

10 (2) regulation of the conduct of licensees;

11 (3) prescription of fees required by Section 11 of
12 this article; and

13 (4) advertisements under Section 28 of this article
14 and the definition of "advertisement" as the term is used in that
15 section.

16 Sec. 30. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

17 (a) The commissioner may deny an application for a license under
18 this article or suspend or revoke a license issued under this
19 article on the basis of:

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

22 (2) a cause that constitutes grounds for denial of an
23 original license;

24 (3) wilful misrepresentation or fraud in obtaining a
25 license;

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

27 (5) the misappropriation or conversion of money

1 required to be held in a fiduciary capacity;

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

4 (7) engaging in a fraudulent transaction;

5 (8) demonstrated incompetence or untrustworthiness in
6 the conduct of the licensee's affairs under the license, as
7 determined by the commissioner;

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

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

12 (b) If the department proposes to refuse to issue an
13 original license under this article or to suspend, revoke, or
14 refuse to renew a license under this article, the person affected is
15 entitled to notice and hearing as provided by Section 3A(b),
16 Article 21.01-2 of this code.

17 (c) A final order entered as a result of a hearing under this
18 section may be appealed to a court of competent jurisdiction as
19 provided by Subchapter D, Chapter 36 of this code.

20 (d) An order suspending a license issued under this article
21 must specify the period of the suspension not to exceed 12 months.

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

24 (f) The commissioner may issue a license or reinstate a
25 suspended or revoked license on a finding that the cause for
26 suspension, revocation, or refusal no longer exists.

27 (g) A person whose license is suspended under this article

1 may apply for a new license only after the expiration of the period
2 of suspension. A person whose license is revoked or whose
3 application for a license is denied, except for a failure to submit
4 a completed application, may not apply for a new license until the
5 fifth anniversary of:

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

7 (2) if the applicant or licensee seeks judicial review
8 of the department's action, the date of the final court order or
9 decree affirming that action.

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

16 (1) pass the required written examination; or

17 (2) submit a properly completed license application.

18 (i) The commissioner, in lieu of suspending or revoking a
19 license for a violation of this article or a rule adopted under this
20 article, may impose on a licensee an administrative penalty in an
21 amount not to exceed \$2,000 per violation if the commissioner
22 determines that such action better serves the purposes of this
23 article.

24 (j) The department may institute a disciplinary proceeding
25 against a licensee for conduct that the licensee committed before
26 the effective date of a voluntary surrender or automatic forfeiture
27 of the license. In the proceeding, the fact that the licensee has

1 surrendered or forfeited the license does not affect the licensee's
2 culpability for the conduct.

3 Sec. 31. AUTOMATIC FINES. Section 5A, Article 21.01-2 of
4 this code, applies to violations of this article.

5 Sec. 32. CRIMINAL PENALTY; SANCTIONS. (a) A person
6 commits an offense if the person violates this article. Except as
7 provided by Section 25(a) of this article, an offense under this
8 subsection is a Class B misdemeanor.

9 (b) In addition to the criminal penalties imposed under
10 Subsection (a) of this section, a person in violation of this
11 article is subject to the sanctions provided by Section 7, Article
12 21.21 of this code, as if the person had violated an order under
13 that section.

14 SECTION 3.03. Section 3, Article 21.01, Insurance Code, is
15 amended to read as follows:

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

- 19 (1) Section 4, Article 1.14-2, of this code;
20 (2) Section 7, Article 3.75, of this code;
21 (3) Subsection (c), Article 5.13-1, of this code;
22 (4) Article 10.37-3 of this code;
23 (5) Article 16.24A of this code;
24 (6) Section 9, Article 17.25, of this code;
25 (7) Article 21.07 of this code;
26 (8) Article 21.07-1 of this code;
27 (9) Chapter 29, Acts of the 54th Legislature, Regular

1 Session, 1955 (Article 21.07-2, Vernon's Texas Insurance Code);

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

4 (11) Chapter 407, Acts of the 63rd Legislature,
5 Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance
6 Code);

7 (12) Article 21.07-5 of this code;

8 (13) Article 21.07-6 of this code;

9 (14) [~~(13)~~] Article 21.07-7 of this code;

10 (15) [~~(14)~~] Article 21.09 of this code;

11 (16) [~~(15)~~] Article 21.11 of this code;

12 (17) [~~(16)~~] Article 21.14 of this code;

13 (18) [~~(17)~~] Article 21.14-1 of this code;

14 (19) [~~(18)~~] Article 21.14-2 of this code; or

15 (20) [~~(19)~~] Article 23.23A of this code.

16 SECTION 3.04. (a) If the commissioner of insurance elects
17 to appoint a public insurance adjusters examination advisory
18 committee under Subsection (c), Section 8, Article 21.07-5,
19 Insurance Code, as added by this article, the commissioner shall
20 appoint the members of the committee not later than the 60th day
21 after the effective date of this Act. If, on the effective date of
22 this Act, the commissioner has a contract with a testing service for
23 the examination of adjuster applicants under Article 21.07-5,
24 Insurance Code, as added by this article, the commissioner may add
25 the public insurance adjusters examination to the scope of that
26 contract, without seeking additional bids, at a fee not greater
27 than the highest adjuster examination fee charged.

1 (b) The commissioner of insurance shall adopt the
2 examination required by Section 8, Article 21.07-5, Insurance Code,
3 as added by this article, not later than January 1, 2004. Pending
4 the adoption of the examination, the commissioner may issue a
5 temporary license to practice as a public insurance adjuster to an
6 individual who satisfies all the requirements for issuance of the
7 license except the examination requirement. A temporary license
8 issued under this subsection expires June 1, 2004, and may not be
9 renewed except as determined by the commissioner.

10 (c) The commissioner of insurance shall adopt the code of
11 ethics prescribed under Section 18, Article 21.07-5, Insurance
12 Code, as added by this article, not later than September 1, 2004.

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

17 ARTICLE 4. EFFECTIVE DATE

18 SECTION 4.01. This Act takes effect immediately if it
19 receives a vote of two-thirds of all the members elected to each
20 house, as provided by Section 39, Article III, Texas Constitution.
21 If this Act does not receive the vote necessary for immediate
22 effect, this Act takes effect September 1, 2003.