

By: Fraser, et al.

S.B. No. 127

Substitute the following for S.B. No. 127:

By: Seaman

C.S.S.B. No. 127

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

1 or the FAIR Plan created and operated under Article 21.49A of this
2 code.

3 (2) "Residential property insurance" means insurance
4 against loss to residential real property at a fixed location or
5 tangible personal property provided in a homeowners policy, which
6 includes a tenant policy, a condominium owners policy, or a
7 residential fire and allied lines policy.

8 (3) "Underwriting guideline" means a rule, standard,
9 guideline, or practice, whether written, oral, or electronic, that
10 is used by an insurer or an agent of an insurer to decide whether to
11 accept or reject an application for a residential property
12 insurance policy or to determine how to classify the risks that are
13 accepted for the purpose of determining a rate.

14 Sec. 3. RESTRICTIONS ON USE OF CLAIMS HISTORY FOR WATER
15 DAMAGE. (a) Underwriting guidelines relating to a water damage
16 claim or claims used by an insurer shall be governed by rules
17 adopted by the commissioner in accordance with the purpose of this
18 article. An insurer may not use an underwriting guideline relating
19 to a water damage claim or claims that is not in accordance with the
20 rules adopted by the commissioner under this article.

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

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

25 (a) An insurer may assess a premium surcharge for water damage
26 claims at the time a residential property insurance policy is
27 issued in accordance with rules adopted by the commissioner. This

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

9 (b) The insurer may at the time of renewal of the policy
10 assess an additional premium surcharge for water damage claims made
11 in the preceding policy year as determined by the commissioner by
12 rule. This surcharge shall be in addition to the premium that would
13 be charged for the policy had the claim or claims not occurred and
14 shall be in addition to the surcharge adopted by the commissioner
15 under Subsection (a) of this section. The commissioner shall
16 determine by rule the amount of any surcharge that may be assessed
17 under this subsection, except that the amount of the surcharge may
18 not exceed 15 percent of the total premium that would be charged for
19 the policy had the claim or claims not occurred, excluding the
20 amount of the surcharge provided in Subsection (a) of this section.
21 The insurer may continue to assess this premium surcharge for a
22 period determined by rule of the commissioner.

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

27 (d) In determining the surcharges under this section, the

1 commissioner may consider the number of water damage claims, the
2 type of water damage claims, and the total amount paid for water
3 damage claims.

4 Sec. 5. RULEMAKING AUTHORITY. The commissioner shall adopt
5 rules to accomplish the purposes of this article, including rules
6 with regard to the definition of a water damage claim.

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

12 ARTICLE 2. CLAIMS HANDLING PROCEDURES AND TIME FRAMES

13 SECTION 2.01. Subchapter E, Chapter 21, Insurance Code, is
14 amended by adding Article 21.55A to read as follows:

15 Art. 21.55A. WATER DAMAGE CLAIMS

16 Sec. 1. PURPOSES. The purposes of this article are to:

17 (1) provide for the prompt, efficient, and effective
18 handling and processing of water damage claims filed under
19 residential property insurance policies, including claims
20 involving losses due to mold;

21 (2) reduce the confusion and inconvenience
22 policyholders experience in filing and resolving water damage
23 claims filed under residential property insurance policies,
24 including claims involving losses due to mold; and

25 (3) reduce claim costs and premiums for residential
26 property insurance issued in this state.

27 Sec. 2. APPLICABILITY. This article applies to any insurer

1 that handles or processes water damage claims filed under
2 residential property insurance policies.

3 Sec. 3. RULES. (a) The commissioner may adopt rules that
4 identify the types of water damage claims that require more prompt,
5 efficient, and effective processing and handling than the
6 processing and handling required under Article 21.55 of this code.

7 (b) The commissioner by rule may regulate the following
8 aspects of water damage claims:

9 (1) required notice;

10 (2) acceptance and rejection of a claim;

11 (3) claim handling and processing procedures and time
12 frames;

13 (4) claim investigation requirements, procedures, and
14 time frames;

15 (5) settlement of claims; and

16 (6) any other area of claim processing, handling, and
17 response determined to be relevant and necessary by the
18 commissioner.

19 (c) A rule adopted under this section supersedes the minimum
20 standards described by Article 21.55 of this code.

21 ARTICLE 3. LICENSING OF PUBLIC INSURANCE ADJUSTERS

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

25 (b) "Adjuster" shall not include:

26 (1) an attorney at law who adjusts insurance losses
27 from time to time and incidental to the practice of law, and who

1 does not advertise or represent that he is an adjuster;

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

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

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

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

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

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

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

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

27 SECTION 3.02. Subchapter A, Chapter 21, Insurance Code, is

1 amended by adding Article 21.07-5 to read as follows:

2 Art. 21.07-5. PUBLIC INSURANCE ADJUSTERS

3 Sec. 1. DEFINITIONS. In this article:

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

6 (2) "Person" includes an individual, firm, company,
7 association, organization, partnership, limited liability company,
8 or corporation.

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

10 (i) an individual who, for compensation:

11 (a) acts on behalf of an insured in
12 negotiating for or effecting the settlement of a claim or claims for
13 loss or damage under any policy of insurance covering real or
14 personal property; or

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

19 (ii) an individual who advertises, solicits
20 business, or holds himself or herself out to the public as an
21 adjuster of claims for loss or damage under any policy of insurance
22 covering real or personal property.

23 (B) "Public insurance adjuster" does not
24 include:

25 (i) an officer or employee of the federal or
26 state government or of a political subdivision of the state
27 government while the officer or employee is engaged in the

1 performance of official duties;

2 (ii) an attorney engaged in the performance
3 of the attorney's professional duties;

4 (iii) insurers admitted to do business in
5 the state, and agents licensed by this state, engaged in the
6 performance of their duties in connection with insurance
7 transactions;

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

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

14 (vi) photographers, estimators, appraisers,
15 engineers, and arbitrators who are employed by a public insurance
16 adjuster exclusively for the purpose of furnishing technical
17 assistance to the licensed public insurance adjuster; or

18 (vii) a private investigator licensed under
19 Chapter 1702, Occupations Code, while acting within the scope of
20 that license.

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

24 Sec. 3. LICENSE REQUIRED; EXEMPTION. (a) A person may not
25 act as a public insurance adjuster in this state or hold himself or
26 herself out to be a public insurance adjuster in this state, unless
27 the person holds a license or certificate issued by the

1 commissioner under Section 5, 15, or 16 of this article.

2 (b) A license is not required for:

3 (1) an attorney licensed to practice law in this state
4 who has complied with Section 5(a)(6) of this article; or

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

8 (c) Any contract for services regulated by this article that
9 is entered into by an insured with a person who is in violation of
10 Subsection (a) of this section may be voided at the option of the
11 insured, and if a contract is so voided, the insured shall not be
12 liable for the payment of any past services rendered, or future
13 services to be rendered, by that person under that contract or
14 otherwise.

15 (d) If the commissioner believes that a person is engaging
16 in acts or practices in violation of Subsection (a) of this section,
17 the commissioner ex parte may issue an emergency cease and desist
18 order, in accordance with Subchapter B, Chapter 83, of this code
19 requiring the person to immediately cease and desist from engaging
20 further in the acts or practices.

21 Sec. 4. APPLICATION FOR LICENSE. (a) An application for a
22 license under this article must be on a form prescribed by the
23 commissioner.

24 (b) The completed application must be notarized and be
25 accompanied by a license application fee, as provided by Section 11
26 of this article, for each application submitted. The application
27 fee is nonrefundable.

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

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

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

10 (3) is a resident of this state;

11 (4) is trustworthy and of a moral character that
12 reasonably ensures that the applicant will conduct the business of
13 a public insurance adjuster fairly and in good faith without
14 detriment to the public;

15 (5) has not been convicted of a felony in the 10 years
16 immediately preceding filing an application under this article or,
17 if convicted of a felony in the 10 years immediately preceding
18 filing an application under this article, has received a full
19 pardon from that conviction and is otherwise relieved from any
20 disabilities connected with that conviction;

21 (6) has sufficient experience or training relating to
22 the assessment of:

23 (A) real and personal property values; and

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

27 (7) is sufficiently informed as to the terms and

1 effects of the types of insurance contracts that provide coverage
2 on real and personal property;

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

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

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

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

16 (b) The commissioner may issue a resident public adjuster
17 license to an applicant who has been convicted of a felony 11 or
18 more years before filing an application under this article if the
19 commissioner determines that the applicant is qualified to act as a
20 public adjuster and that the circumstances surrounding the
21 applicant's conviction do not warrant the denial of a license
22 issued under this chapter.

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

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

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

24 (c) A license suspended under Subsection (b) of this section
25 may be reinstated on the approval of an application for
26 reinstatement filed with the commissioner, in the form prescribed
27 by the commissioner, with proof that the financial responsibility

1 requirements of this section have been met. The commissioner may
2 deny the application for reinstatement:

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

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

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

15 Sec. 8. EXAMINATION FOR LICENSE; ADVISORY COMMITTEE.
16 (a) Each applicant for a license as a public insurance adjuster
17 must, before the issuance of the license, take and pass an
18 examination to the satisfaction of the commissioner.

19 (b) The examination required by this section must be
20 prescribed by the commissioner and must be of sufficient scope to
21 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) Article 21.55 of this code;

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

8 (F) analogous laws as specified by the
9 commissioner;

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

13 (H) the duties and responsibilities of public
14 insurance adjusters under the law.

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

27 (d) The commissioner shall, within a reasonable period not

1 to exceed 30 days after the date of the examination, transmit the
2 results of the examination and the action taken on the application
3 to the applicant.

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

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

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

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

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

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

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

24 (2) the date of issuance and the date of expiration of
25 the license; and

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

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

2 (a) The commissioner shall collect in advance the following
3 nonrefundable fees:

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

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

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

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

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

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

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

1 enforce this article. A person employed by the department under
2 this section may examine under oath any person for the purpose of
3 gathering information and evidence and may have the information and
4 evidence reduced to writing. All expenses incurred under this
5 section shall be paid from the fees collected under this article.

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

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

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

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

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

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

1 Sec. 15. NONRESIDENT LICENSE. (a) The commissioner may
2 issue a nonresident license to an applicant for a public insurance
3 adjuster license who is not a permanent resident of this state on
4 determining that the application meets the requirements of this
5 article, that the nonresident license application fee has been
6 paid, and that the applicant is an individual who:

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

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

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

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

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

27 (4) is trustworthy and of a moral character that

1 reasonably ensures that the applicant will conduct the business of
2 a public insurance adjuster fairly and in good faith without
3 detriment to the public;

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

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

10 (A) real and personal property values; and

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

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

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

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

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

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

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

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

27 (13) complies with any other requirements under

1 applicable state law, including providing a complete set of
2 fingerprints on request as provided by Article 1.10C of this code.

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

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

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

1 renewal of a nonresident public insurance adjuster license.

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

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

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

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

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

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

1 Sec. 17. CONDUCT TO COMPLY WITH CONTRACT. A licensee shall
2 prepare each claim for an insured represented by the licensee in
3 accordance with the terms and conditions of the contract of
4 insurance under which recovery is sought.

5 Sec. 18. CODE OF ETHICS. The commissioner, with guidance
6 from the public insurance adjusters examination advisory
7 committee, by rule shall adopt:

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

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

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

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

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

1 demonstrates continued compliance with the license requirements
2 imposed under this article or adopted by rule by the commissioner.

3 The completed renewal application must be accompanied by:

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

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

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

12 The original license continues in force until:

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

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

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

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

1 fee.

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

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

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

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

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

26 Sec. 22. COMMISSION. (a) Except as provided by Subsection
27 (b) of this section, a licensee may receive a commission for service

1 provided under this article consisting of an hourly fee, a flat
2 rate, a percentage of the total amount paid by an insurer to resolve
3 a claim, or another method of compensation. The total commission
4 received may not exceed 10 percent of the amount of the insurance
5 settlement on the claim.

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

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

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

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

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

1 (e) Notwithstanding any authorization the insured may have
2 given to a public insurance adjuster, a public insurance adjuster
3 may not sign and endorse any payment draft or check on behalf of an
4 insured.

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

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

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

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

1 a notice in 12-point boldface type, prominently displayed, the
2 statement: "WE REPRESENT THE INSURED ONLY." The commissioner by
3 rule may require additional prominently displayed notice
4 requirements in the contract as the commissioner deems necessary.

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

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

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

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

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

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

1 insurance policy.

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

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

14 (m) A licensee may not:

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

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

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

27 (4) use any letterhead, advertisement, or other

1 printed matter, or use any other means, to represent that the
2 licensee is an instrumentality of the federal government, of a
3 state, or of a political subdivision of a state; or

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

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

11 (1) the name of the insured;

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

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

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

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

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

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

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

27 Sec. 25. FIDUCIARY CAPACITY. (a) All funds received as

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

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

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

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

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

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

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

1 Sec. 28. ADVERTISEMENTS. Every advertisement by a licensee
2 soliciting or advertising business must display the licensee's
3 name, address, and license number as they appear in the records of
4 the commissioner.

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 licensees, in addition to those
9 prescribed by this article, that are necessary to promote and
10 protect the public interest;

11 (2) regulation of the conduct of licensees;

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

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

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

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

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

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

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

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

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

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

5 (7) engaging in a fraudulent transaction;

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

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

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

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

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

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

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

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

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

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

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

- 17 (1) pass the required written examination; or
18 (2) submit a properly completed license application.

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

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

1 of the license. In the proceeding, the fact that the licensee has
2 surrendered or forfeited the license does not affect the licensee's
3 culpability for the conduct.

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

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

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

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

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

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

1 (9) Chapter 29, Acts of the 54th Legislature, Regular
2 Session, 1955 (Article 21.07-2, Vernon's Texas Insurance Code);

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

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

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

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

10 (14) [~~(13)~~] Article 21.07-7 of this code;

11 (15) [~~(14)~~] Article 21.09 of this code;

12 (16) [~~(15)~~] Article 21.11 of this code;

13 (17) [~~(16)~~] Article 21.14 of this code;

14 (18) [~~(17)~~] Article 21.14-1 of this code;

15 (19) [~~(18)~~] Article 21.14-2 of this code; or

16 (20) [~~(19)~~] Article 23.23A of this code.

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

1 than the highest adjuster examination fee charged.

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

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

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

18 ARTICLE 4. EFFECTIVE DATE

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