

1-1 By: Fraser, Jackson S.B. No. 127  
1-2 (In the Senate - Filed November 20, 2002; January 29, 2003,  
1-3 read first time and referred to Committee on Business and Commerce;  
1-4 March 20, 2003, reported adversely, with favorable Committee  
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1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 127 By: Jackson

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the handling, settling, and use of certain claims in the  
1-11 insurance business; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 ARTICLE 1. WATER DAMAGE CLAIMS

1-14 SECTION 1.01. Subchapter C, Chapter 5, Insurance Code, is  
1-15 amended by adding Article 5.35-4 to read as follows:

1-16 Art. 5.35-4. RESTRICTIONS ON USE OF CLAIMS HISTORY FOR  
1-17 WATER DAMAGE; PERMISSIBLE SURCHARGES

1-18 Sec. 1. PURPOSE. The purpose of this article is to protect  
1-19 persons and property from being unfairly stigmatized in obtaining  
1-20 residential property insurance by the filing of a water damage  
1-21 claim or claims under a residential property insurance policy.

1-22 Sec. 2. DEFINITIONS. In this article:

1-23 (1) "Insurer" means an insurance company, reciprocal  
1-24 or interinsurance exchange, mutual, capital stock company, county  
1-25 mutual insurance company, farm mutual insurance company,  
1-26 association, Lloyd's plan company, or other entity writing  
1-27 residential property insurance in the state. The term includes an  
1-28 affiliate as described by Section 2, Article 21.49-1 of this code,  
1-29 or Section 823.003(a) of this code if that affiliate is authorized  
1-30 to write and is writing residential property insurance in the  
1-31 state. The term does not include the Texas Windstorm Insurance  
1-32 Association created and operated under Article 21.49 of this code  
1-33 or the FAIR Plan created and operated under Article 21.49A of this  
1-34 code.

1-35 (2) "Residential property insurance" means insurance  
1-36 against loss to residential real property at a fixed location or  
1-37 tangible personal property provided in a homeowners policy, which  
1-38 includes a tenant policy, a condominium owners policy, or a  
1-39 residential fire and allied lines policy.

1-40 (3) "Underwriting guideline" means a rule, standard,  
1-41 guideline, or practice, whether written, oral, or electronic, that  
1-42 is used by an insurer or an agent of an insurer to decide whether to  
1-43 accept or reject an application for a residential property  
1-44 insurance policy or to determine how to classify the risks that are  
1-45 accepted for the purpose of determining a rate.

1-46 Sec. 3. RESTRICTIONS ON USE OF CLAIMS HISTORY FOR WATER  
1-47 DAMAGES. (a) Underwriting guidelines relating to a water damage  
1-48 claim or claims used by an insurer shall be governed by rules  
1-49 adopted by the commissioner in accordance with the purpose of this  
1-50 article. An insurer may not use an underwriting guideline relating  
1-51 to a water damage claim or claims that is not in accordance with the  
1-52 rules adopted by the commissioner under this article.

1-53 (b) An insurer shall file with the department its  
1-54 underwriting guidelines relating to a water damage claim or claims  
1-55 in accordance with the rules adopted by the commissioner.

1-56 Sec. 4. PREMIUM SURCHARGES FOR WATER DAMAGE CLAIMS.

1-57 (a) An insurer may assess a premium surcharge for water damage  
1-58 claims at the time a residential property insurance policy is  
1-59 issued in accordance with rules adopted by the commissioner. This  
1-60 surcharge shall be in addition to the premium that would be charged  
1-61 for the policy had the claim or claims not occurred. The  
1-62 commissioner shall determine by rule the amount of any surcharge  
1-63 that may be assessed under this subsection, except that the amount

2-1 of the surcharge may not exceed 15 percent of the total premium that  
 2-2 would be charged for the policy had the claim or claims not  
 2-3 occurred. The insurer may continue to assess this premium  
 2-4 surcharge for such period as the commissioner determines by rule.

2-5 (b) The insurer may at the time of renewal of the policy  
 2-6 assess an additional premium surcharge for water damage claims made  
 2-7 in the preceding policy year as determined by the commissioner by  
 2-8 rule. This surcharge shall be in addition to the premium that would  
 2-9 be charged for the policy had the claim or claims not occurred and  
 2-10 shall be in addition to the surcharge adopted by the commissioner  
 2-11 under Subsection (a) of this section. The commissioner shall  
 2-12 determine by rule the amount of any surcharge that may be assessed  
 2-13 under this subsection, except that the amount of the surcharge may  
 2-14 not exceed 15 percent of the total premium that would be charged for  
 2-15 the policy had the claim or claims not occurred, excluding the  
 2-16 amount of the surcharge provided in Subsection (a) of this section.  
 2-17 The insurer may continue to assess this premium surcharge for such  
 2-18 period as the commissioner determines by rule.

2-19 (c) The commissioner may authorize a surcharge as provided  
 2-20 in Subsection (a) or (b) of this section that is greater than 15  
 2-21 percent for risks with three or more water damage claims in  
 2-22 accordance with rules adopted by the commissioner.

2-23 (d) In determining the surcharges under this section, the  
 2-24 commissioner may consider the number of water damage claims, the  
 2-25 type of water damage claims, and the total amount paid for water  
 2-26 damage claims.

2-27 Sec. 5. RULEMAKING AUTHORITY. The commissioner shall adopt  
 2-28 rules to accomplish the purposes of this article, including rules  
 2-29 with regard to the definition of a water damage claim.

2-30 SECTION 1.02. Article 5.35-4, Insurance Code, as added by  
 2-31 this article, applies only to a residential property insurance  
 2-32 policy that is delivered or issued for delivery based on an  
 2-33 application that is submitted on or after the effective date of this  
 2-34 Act.

## 2-35 ARTICLE 2. CLAIMS HANDLING PROCEDURES AND TIME FRAMES

2-36 SECTION 2.01. Article 21.55, Insurance Code, is amended by  
 2-37 adding Section 9 to read as follows:

### 2-38 Sec. 9. MINIMUM STANDARDS; RULEMAKING AUTHORITY.

2-39 (a) Sections 2 and 3 of this article provide minimum standards for  
 2-40 notice of claims and the acceptance or rejection of claims.

2-41 (b) The commissioner may adopt rules that identify the types  
 2-42 of claims requiring more prompt, efficient, and effective notice,  
 2-43 acceptance or rejection, and processing and handling procedures,  
 2-44 including commencement of the investigation, than those specified  
 2-45 in Sections 2 and 3 of this article. The commissioner by rule may  
 2-46 regulate for such claims:

2-47 (1) notice;  
 2-48 (2) acceptance or rejection;  
 2-49 (3) claims handling and processing procedures and time  
 2-50 frames;  
 2-51 (4) investigation procedures and time frames and  
 2-52 requirements for action to be taken before, during, and after  
 2-53 investigation;

2-54 (5) settlement; and  
 2-55 (6) other aspects of claims response, handling, and  
 2-56 processing determined relevant and necessary by the commissioner.

2-57 (c) Any rules adopted under this section supersede the  
 2-58 minimum standards described in Sections 2 and 3 of this article for  
 2-59 the types of claims identified by the commissioner under Subsection  
 2-60 (b) of this section.

2-61 (d) The purpose of any rules adopted under this section is  
 2-62 to ensure a more timely response to claimants with certain types of  
 2-63 claims identified by the commissioner, reduce claimants' confusion  
 2-64 and inconvenience, reduce claims costs, and mitigate losses.

## 2-65 ARTICLE 3. LICENSING OF PUBLIC INSURANCE ADJUSTERS

2-66 SECTION 3.01. Subsection (b), Section 1, Chapter 407, Acts  
 2-67 of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4,  
 2-68 Vernon's Texas Insurance Code), is amended to read as follows:

2-69 (b) "Adjuster" shall not include:

3-1 (1) an attorney at law who adjusts insurance losses  
3-2 from time to time and incidental to the practice of law, and who  
3-3 does not advertise or represent that he is an adjuster;

3-4 (2) a salaried employee of an insurer who is not  
3-5 regularly engaged in the adjustment, investigation, or supervision  
3-6 of insurance claims;

3-7 (3) persons employed only for the purpose of  
3-8 furnishing technical assistance to a licensed adjuster, including,  
3-9 but not limited to, photographers, estimators, private detectives,  
3-10 engineers, handwriting experts, and attorneys at law;

3-11 (4) a licensed agent or general agent of an authorized  
3-12 insurer who processes undisputed and/or uncontested losses for such  
3-13 insurer under policies issued by said agent or general agent;

3-14 (5) a person who performs clerical duties with no  
3-15 negotiations with the parties on disputed and/or contested claims;

3-16 (6) any person who handles claims arising under life,  
3-17 accident and health insurance policies;

3-18 (7) a person who is employed principally as a  
3-19 right-of-way agent or right-of-way and claims agent and whose  
3-20 primary responsibility is the acquisition of easements, leases,  
3-21 permits, or other real property rights and whose claims handling  
3-22 arises out of operations under those easements, leases, permits, or  
3-23 other contracts or contractual obligations; [~~or~~]

3-24 (8) an individual who is employed to investigate  
3-25 suspected fraudulent insurance claims but who does not adjust  
3-26 losses or determine claims payments; or

3-27 (9) a public insurance adjuster who is licensed under  
3-28 Article 21.07-5, Insurance Code.

3-29 SECTION 3.02. Subchapter A, Chapter 21, Insurance Code, is  
3-30 amended by adding Article 21.07-5 to read as follows:

3-31 Art. 21.07-5. PUBLIC INSURANCE ADJUSTERS

3-32 Sec. 1. DEFINITIONS. In this article:

3-33 (1) "Licensee" means an individual licensed under this  
3-34 article as a public insurance adjuster.

3-35 (2) "Person" includes an individual, firm, company,  
3-36 association, organization, partnership, limited liability company,  
3-37 or corporation.

3-38 (3)(A) "Public insurance adjuster" means:

3-39 (i) an individual who, for compensation:

3-40 (a) acts on behalf of an insured in  
3-41 negotiating for or effecting the settlement of a claim or claims for  
3-42 loss or damage under any policy of insurance covering real or  
3-43 personal property; or

3-44 (b) on behalf of any other public  
3-45 insurance adjuster, investigates, settles, or adjusts or advises or  
3-46 assists an insured with a claim or claims for loss or damage under  
3-47 any policy of insurance covering real or personal property; or

3-48 (ii) an individual who advertises, solicits  
3-49 business, or holds himself or herself out to the public as an  
3-50 adjuster of claims for loss or damage under any policy of insurance  
3-51 covering real or personal property.

3-52 (B) "Public insurance adjuster" does not  
3-53 include:

3-54 (i) an officer or employee of the federal or  
3-55 state government or of a political subdivision of the state  
3-56 government while the officer or employee is engaged in the  
3-57 performance of official duties;

3-58 (ii) an attorney engaged in the performance  
3-59 of the attorney's professional duties;

3-60 (iii) insurers admitted to do business in  
3-61 the state, and agents licensed by this state, engaged in the  
3-62 performance of their duties in connection with insurance  
3-63 transactions;

3-64 (iv) the legal owner of personal property  
3-65 that has been sold under a conditional sales agreement or a  
3-66 mortgagee under the terms of a chattel mortgage;

3-67 (v) any salaried office employee who  
3-68 performs exclusively clerical or administrative duties attendant  
3-69 to the disposition of the business regulated by this article;

4-1 (vi) photographers, estimators, appraisers,  
4-2 engineers, and arbitrators who are employed by a public insurance  
4-3 adjuster exclusively for the purpose of furnishing technical  
4-4 assistance to the licensed public insurance adjuster; or

4-5 (vii) a private investigator licensed under  
4-6 Chapter 1702, Occupations Code, while acting within the scope of  
4-7 that license.

4-8 Sec. 2. NOT LAW LICENSE. Nothing in this article shall be  
4-9 construed as entitling any person who is not licensed by the Supreme  
4-10 Court of Texas to practice law in the state.

4-11 Sec. 3. LICENSE REQUIRED; EXEMPTION. (a) A person may not  
4-12 act as a public insurance adjuster in this state or hold himself or  
4-13 herself out to be a public insurance adjuster in this state, unless  
4-14 the person holds a license issued by the commissioner under Section  
4-15 5, Section 15, or Section 16 of this article.

4-16 (b) A license is not required for:  
4-17 (1) an attorney licensed to practice law in this  
4-18 state; or

4-19 (2) a person licensed as a general property and  
4-20 casualty agent under Article 21.14 of this code while acting for an  
4-21 insured concerning a loss under a policy issued by that agent.

4-22 (c) Any contract for services regulated by this article that  
4-23 is entered into by an insured with a person who is in violation of  
4-24 Subsection (a) of this section may be voided at the option of the  
4-25 insured, and if a contract is so voided, the insured shall not be  
4-26 liable for the payment of any past services rendered, or future  
4-27 services to be rendered, by that person under that contract or  
4-28 otherwise.

4-29 (d) If the commissioner believes that a person is engaging  
4-30 in acts or practices in violation of Subsection (a) of this section,  
4-31 the commissioner ex parte may issue an emergency cease and desist  
4-32 order, in accordance with Subchapter B, Chapter 83 of this code,  
4-33 requiring the person to immediately cease and desist from engaging  
4-34 further in the acts or practices.

4-35 Sec. 4. APPLICATION FOR LICENSE. (a) An application for a  
4-36 license under this article must be on a form prescribed by the  
4-37 commissioner.

4-38 (b) The completed application must be notarized and be  
4-39 accompanied by a license application fee, as provided by Section 11  
4-40 of this article, for each application submitted. The application  
4-41 fee is nonrefundable.

4-42 Sec. 5. QUALIFICATIONS FOR LICENSE; ISSUANCE. The  
4-43 commissioner shall issue a public insurance adjuster license to an  
4-44 applicant on determining that the application meets the  
4-45 requirements of this article, that the license application fee has  
4-46 been paid, and that the applicant is an individual who:

4-47 (1) is at least 18 years of age;  
4-48 (2) is a citizen of the United States or has complied  
4-49 with all federal laws pertaining to employment or to the  
4-50 transaction of business in the United States;

4-51 (3) is a resident of the state;  
4-52 (4) is trustworthy and of a moral character that  
4-53 reasonably ensures that the applicant will conduct the business of  
4-54 a public insurance adjuster fairly and in good faith without  
4-55 detriment to the public;

4-56 (5) has never been convicted of a felony or, if  
4-57 convicted of a felony, has received a full pardon from that  
4-58 conviction and is otherwise relieved from any disabilities  
4-59 connected with that conviction;

4-60 (6) has sufficient experience or training relating to  
4-61 the assessment of:

4-62 (A) real and personal property values; and  
4-63 (B) physical loss of or damage to real or  
4-64 personal property that may be the subject of insurance and claims  
4-65 under insurance;

4-66 (7) is sufficiently informed as to the terms and  
4-67 effects of the types of insurance contracts that provide coverage  
4-68 on real and personal property;

4-69 (8) possesses knowledge and experience adequate to

5-1 enable the applicant to engage in the business of a public insurance  
 5-2 adjuster fairly and without injury to the public or any member of  
 5-3 the public with whom the applicant may have business as a public  
 5-4 insurance adjuster;

5-5 (9) has successfully passed the license examination  
 5-6 prescribed under Section 8 of this article or is exempt from the  
 5-7 examination requirement under this article;

5-8 (10) has complied with the financial responsibility  
 5-9 requirements imposed under Section 6 of this article; and

5-10 (11) has complied with any other requirements under  
 5-11 applicable state law, including providing a complete set of  
 5-12 fingerprints on request as provided by Article 1.10C of this code.

5-13 Sec. 6. FINANCIAL RESPONSIBILITY REQUIREMENTS. (a) As a  
 5-14 continuing condition of licensure, a public insurance adjuster must  
 5-15 file proof of financial responsibility with respect to transactions  
 5-16 with insureds under this article in an amount determined by the  
 5-17 commissioner by rule. The financial responsibility shall include  
 5-18 the ability to pay sums the public insurance adjuster is obligated  
 5-19 to pay under any judgment against the public insurance adjuster by  
 5-20 an insured, based on an error, omission, fraud, negligent act, or  
 5-21 unfair practice of the public insurance adjuster or any person for  
 5-22 whose acts the public insurance adjuster is legally liable in the  
 5-23 transaction of the public insurance adjuster's business under this  
 5-24 code. In determining the amount of the financial responsibility  
 5-25 requirement, the commissioner shall consider the nature of the  
 5-26 obligation, other financial security requirements under this code,  
 5-27 and financial security requirements adopted for public insurance  
 5-28 adjusters in other states. In determining the types of financial  
 5-29 responsibility required, the commissioner may consider a surety  
 5-30 bond or a professional liability policy or similar policy or  
 5-31 contract of professional liability coverage acceptable to the  
 5-32 commissioner.

5-33 (b) In addition to any other remedy available under this  
 5-34 code, if the commissioner believes that a person is committing a  
 5-35 violation by failing to maintain the financial responsibility  
 5-36 requirements of this section, the commissioner ex parte may issue  
 5-37 an emergency cease and desist order and suspend the person's  
 5-38 license, in accordance with Subchapter B, Chapter 83 of this code,  
 5-39 requiring the person to immediately cease and desist from engaging  
 5-40 in the activities of a public insurance adjuster.

5-41 (c) A license suspended under Subsection (b) of this section  
 5-42 may be reinstated on the approval of an application for  
 5-43 reinstatement filed with the commissioner, in the form prescribed  
 5-44 by the commissioner, with proof that the financial responsibility  
 5-45 requirements of this section have been met. The commissioner may  
 5-46 deny the application for reinstatement:

5-47 (1) for any reason that would justify a refusal to  
 5-48 issue, or a suspension or revocation of, a license; or

5-49 (2) for the performance by the applicant of any  
 5-50 practice for which a license under this article is required while  
 5-51 the applicant is under suspension for failure to keep the financial  
 5-52 responsibility requirements in force.

5-53 Sec. 7. LICENSE AUTHORIZATION. A license issued under  
 5-54 Section 5 or Section 15 of this article authorizes the adjusting of  
 5-55 claims on behalf of insureds for fire and allied coverages,  
 5-56 burglary, flood, and all other property claims, both real and  
 5-57 personal, including loss of income, but only when the client is an  
 5-58 insured under the insurance policy.

5-59 Sec. 8. EXAMINATION FOR LICENSE; ADVISORY COMMITTEE.  
 5-60 (a) Each applicant for a license as a public insurance adjuster  
 5-61 must, before the issuance of the license, personally take and pass  
 5-62 an examination to the satisfaction of the commissioner.

5-63 (b) The examination required by this section must be  
 5-64 prescribed by the commissioner and must be of sufficient scope to  
 5-65 reasonably test the applicant's:

5-66 (1) knowledge of basic insurance theory, essential  
 5-67 elements of contracts, and claims ethics;

5-68 (2) technical competence in the handling of the types  
 5-69 of claims for which the applicant is being tested; and

6-1                   (3) knowledge of:  
6-2                   (A) Article 21.21 of this code;  
6-3                   (B) the Unauthorized Insurers False Advertising  
6-4 Process Act (Article 21.21-1, Vernon's Texas Insurance Code);  
6-5                   (C) Article 21.21-2 of this code;  
6-6                   (D) Article 21.55 of this code;  
6-7                   (E) the Deceptive Trade Practices-Consumer  
6-8 Protection Act (Subchapter E, Chapter 17, Business & Commerce  
6-9 Code);  
6-10                   (F) analogous laws as specified by the  
6-11 commissioner;  
6-12                   (G) statutory provisions related to the  
6-13 unauthorized practice of law contained in Subchapter G, Chapter 81,  
6-14 Government Code; and  
6-15                   (H) the duties and responsibilities of public  
6-16 insurance adjusters under the law.  
6-17                   (c) The commissioner may appoint a public insurance  
6-18 adjusters examination advisory committee composed of at least five  
6-19 members to assist in developing the examination required by this  
6-20 section. At least three members must be eligible for licensure as  
6-21 public insurance adjusters. At least one member must be a person  
6-22 from the insurance industry who is not a public insurance adjuster,  
6-23 and at least one member must represent consumer interests. A member  
6-24 of the advisory committee is not entitled to compensation for  
6-25 service on the committee. A member is entitled to reimbursement for  
6-26 reasonable and necessary expenses incurred in performing services  
6-27 for the committee, subject to any limitation in the General  
6-28 Appropriations Act.  
6-29                   (d) The commissioner shall, within a reasonable period not  
6-30 to exceed 30 days after the date of the examination, transmit the  
6-31 results of the examination and the action taken on the application  
6-32 to the applicant.  
6-33                   (e) An examination is not required for the renewal of a  
6-34 license issued under Section 5 or Section 15 of this article.  
6-35                   Sec. 9. EXAMINATION; FORM; TIME. (a) The answers of the  
6-36 applicant to an examination required under this article shall be  
6-37 made by the applicant in writing. A written examination may be  
6-38 supplemented by oral examination.  
6-39                   (b) The examination shall be given at such times and places  
6-40 within the state as the commissioner deems necessary to reasonably  
6-41 serve the convenience of both the commissioner and applicants.  
6-42                   (c) The commissioner may require a waiting period of  
6-43 reasonable duration before an applicant who fails the examination,  
6-44 but who is otherwise qualified, may be reexamined.  
6-45                   (d) The scheduling and administration of examinations  
6-46 required under Section 8 of this article shall be effected by  
6-47 persons approved by the commissioner.  
6-48                   Sec. 10. FORM OF LICENSE. The commissioner shall prescribe  
6-49 the form of the licenses issued under Section 5 or Section 15 of  
6-50 this article, which must contain:  
6-51                   (1) the name of the public insurance adjuster and the  
6-52 address of the public insurance adjuster's place of business;  
6-53                   (2) the date of issuance and the date of expiration of  
6-54 the license; and  
6-55                   (3) the name of the firm, if any, with whom the public  
6-56 insurance adjuster is employed at the time the license is issued.  
6-57                   Sec. 11. FEE FOR LICENSE, RENEWAL, AND EXAMINATION.  
6-58 (a) The commissioner shall collect in advance the following  
6-59 nonrefundable fees:  
6-60                   (1) for a public insurance adjuster license, an  
6-61 application fee in an amount to be determined by rule by the  
6-62 commissioner;  
6-63                   (2) for a nonresident public insurance adjuster  
6-64 license, an application fee in an amount to be determined by rule by  
6-65 the commissioner;  
6-66                   (3) for each public insurance adjuster examination, a  
6-67 fee in an amount to be determined by rule by the commissioner; and  
6-68                   (4) for a public insurance adjuster trainee  
6-69 certificate under Section 16 of this article, a registration fee in

7-1 an amount to be determined by rule by the commissioner.

7-2 (b) The amount of the fee for the renewal of a license or a  
 7-3 certificate issued under this article shall be determined by rule  
 7-4 by the commissioner.

7-5 Sec. 12. USE OF FEES COLLECTED. (a) When collected, the  
 7-6 fees authorized by this article shall be deposited with the  
 7-7 comptroller to the credit of the Texas Department of Insurance  
 7-8 operating account.

7-9 (b) The department may use any portion of the fees collected  
 7-10 to enforce this article, to employ persons as it considers  
 7-11 necessary to investigate and make reports regarding alleged  
 7-12 violations of this code and misconduct on the part of public  
 7-13 insurance adjusters, and to pay the salaries and expenses of  
 7-14 persons and office employees and other expenses necessary to  
 7-15 enforce this article. A person employed by the department under  
 7-16 this section may administer the oath and examine under oath any  
 7-17 person considered necessary in gathering information and evidence  
 7-18 and may have that information and evidence reduced to writing if  
 7-19 considered necessary, and all related expenses shall be paid from  
 7-20 the fees.

7-21 (c) The commissioner shall set the fees in amounts  
 7-22 reasonable and necessary to implement this article.

7-23 Sec. 13. PLACE OF BUSINESS; AGENT FOR SERVICE OF PROCESS.

7-24 (a) Each licensee who is a resident of the state shall maintain a  
 7-25 place of business in the state that is accessible to the general  
 7-26 public and maintain in the place of business the records required by  
 7-27 this article. The address of the place of business must appear on  
 7-28 the face of the license. The licensee shall promptly notify the  
 7-29 commissioner of any change in the address of the licensee's place of  
 7-30 business.

7-31 (b) Each nonresident licensee shall maintain an agent in the  
 7-32 state for service of process. The name and address of the  
 7-33 nonresident licensee's out-of-state business address and the name  
 7-34 and address of the agent must appear on the face of the license. The  
 7-35 licensee shall promptly notify the department of any change in the  
 7-36 address of the licensee's place of business or in the agent for  
 7-37 service of process.

7-38 (c) A license issued under this article must at all times be  
 7-39 posted in a conspicuous place in the principal place of business of  
 7-40 the licensee.

7-41 Sec. 14. LICENSE NOT ASSIGNABLE. A license issued under  
 7-42 this article is not assignable.

7-43 Sec. 15. NONRESIDENT LICENSE. (a) The commissioner may  
 7-44 issue a nonresident license to an applicant for a public insurance  
 7-45 adjuster license who is not a permanent resident of the state on  
 7-46 determining that the application meets the requirements of this  
 7-47 article, that the nonresident license application fee has been  
 7-48 paid, and that the applicant is an individual who:

7-49 (1) is at least 18 years of age;

7-50 (2) has passed, to the satisfaction of the  
 7-51 commissioner, an examination approved by the commissioner and of  
 7-52 sufficient scope as prescribed in Section 8 of this article,  
 7-53 provided, however, that the requirement for such an examination  
 7-54 does not apply to:

7-55 (A) an applicant who is licensed as a resident  
 7-56 public insurance adjuster in the applicant's state of residence, if  
 7-57 the state requires the passing of a written examination in order to  
 7-58 obtain the license and a reciprocal agreement with the appropriate  
 7-59 official of that state has been entered into by the department; or

7-60 (B) an applicant who is licensed as a nonresident  
 7-61 public insurance adjuster in a state other than the applicant's  
 7-62 state of residence, if the state of licensure requires the passing  
 7-63 of a written examination in order to obtain the license and a  
 7-64 reciprocal agreement with the appropriate official of the state of  
 7-65 licensure has been entered into by the department;

7-66 (3) is self-employed as a public insurance adjuster or  
 7-67 associated with or employed by a public insurance adjusting firm or  
 7-68 other public insurance adjuster;

7-69 (4) is trustworthy and of a moral character that

8-1 reasonably ensures that the applicant will conduct the business of  
8-2 a public insurance adjuster fairly and in good faith without  
8-3 detriment to the public;

8-4 (5) has never been convicted of a felony or, if  
8-5 convicted of a felony, has received a full pardon from that  
8-6 conviction and is otherwise relieved from any disabilities  
8-7 connected with that conviction;

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

8-10 (A) real and personal property values; and

8-11 (B) physical loss of or damage to real or  
8-12 personal property that may be the subject of insurance and claims  
8-13 under insurance;

8-14 (7) is sufficiently informed as to the terms and  
8-15 effects of the types of insurance contracts that provide coverage  
8-16 on real and personal property;

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

8-22 (9) if currently licensed as a resident public  
8-23 insurance adjuster in the applicant's state of residence, provides  
8-24 with the application a certificate or letter of authorization from  
8-25 the licensing authority of the applicant's state of residence,  
8-26 stating that the applicant holds a current or comparable license to  
8-27 act as a public insurance adjuster; the certificate or letter must  
8-28 be signed by the appropriate licensing official of the applicant's  
8-29 state of residence and must disclose whether the applicant has ever  
8-30 had any license or eligibility to hold any license declined,  
8-31 denied, suspended, or revoked and whether the applicant has ever  
8-32 been placed on probation and whether an administrative fine or  
8-33 penalty has been levied against the applicant and, if so, the reason  
8-34 for the action;

8-35 (10) if the applicant's state of residence does not  
8-36 require licensure as a resident public insurance adjuster and the  
8-37 applicant has been licensed as an adjuster, agent, broker, or other  
8-38 insurance representative in the applicant's state of residence or  
8-39 any other state within the past three years, provides with the  
8-40 application a certificate or letter of authorization from the  
8-41 licensing authority stating that the applicant holds or has held a  
8-42 license to act as an adjuster, agent, broker, or other insurance  
8-43 representative; the certificate or letter must be signed by the  
8-44 appropriate licensing official and must disclose whether the  
8-45 applicant has ever had any license or eligibility to hold any  
8-46 license declined, denied, suspended, or revoked and whether the  
8-47 applicant has ever been placed on probation and whether an  
8-48 administrative fine or penalty has been levied against the  
8-49 applicant and, if so, the reason for the action;

8-50 (11) files proof of financial responsibility in  
8-51 accordance with Section 6 of this article;

8-52 (12) pays the application fee required by Section 11  
8-53 of this article; and

8-54 (13) complies with any other requirements under  
8-55 applicable state law, including providing a complete set of  
8-56 fingerprints on request as provided by Article 1.10C of this code.

8-57 (b) A nonresident licensee shall comply with all of the  
8-58 requirements of this article in performing any of the activities of  
8-59 a public insurance adjuster in this state, including the  
8-60 requirements on record maintenance in Section 24 of this article.  
8-61 The failure of a nonresident licensee, as determined by the  
8-62 commissioner after notice and an opportunity for a hearing, to  
8-63 properly maintain records in accordance with this article and make  
8-64 them available to the department on request constitutes grounds for  
8-65 the suspension of the nonresident license issued under this  
8-66 article, in accordance with Section 30 of this article.

8-67 (c) Each individual who holds a nonresident license shall  
8-68 comply with all other laws and rules of this state applicable to  
8-69 public insurance adjusters, including the law governing the



9-1 collection of state sales tax as appropriate for services performed  
 9-2 under this article.

9-3 (d) After licensure as a nonresident public insurance  
 9-4 adjuster, as a condition of doing business in this state, the  
 9-5 licensee must annually, not later than January 1 and on a form  
 9-6 prescribed by the commissioner, submit an affidavit certifying that  
 9-7 the licensee is familiar with and understands the laws specified in  
 9-8 Section 8 of this article, the applicable rules adopted under those  
 9-9 laws, and the terms and conditions of the types of insurance  
 9-10 contracts that provide coverage on real and personal property.  
 9-11 Compliance with the filing requirement provided by this subsection  
 9-12 is necessary to the issuance, continuation, reinstatement, or  
 9-13 renewal of a nonresident public insurance adjuster license.

9-14 (e) A nonresident licensee is subject to Section 6(b) of  
 9-15 this article, relating to failure to maintain the financial  
 9-16 responsibility requirements.

9-17 Sec. 16. REGISTRATION PROGRAM FOR TRAINEES. (a) A public  
 9-18 insurance adjuster trainee must register with the department for a  
 9-19 temporary certificate under this section. An applicant for a  
 9-20 temporary certificate as a trainee must apply to the commissioner  
 9-21 on a form prescribed by the commissioner. The form must be  
 9-22 accompanied by a nonrefundable registration fee as prescribed by  
 9-23 Section 11(a)(4) of this article.

9-24 (b) A temporary certificate may be issued under this section  
 9-25 only for educational and training purposes. The holder of a  
 9-26 temporary certificate may practice only under the direction and  
 9-27 sponsorship of a licensee of this state.

9-28 (c) The sponsor of a public insurance adjuster trainee shall  
 9-29 attest, on a form prescribed by the commissioner, that the trainee  
 9-30 is under the supervision and control of the sponsor and that the  
 9-31 sponsor has met the financial responsibility requirements of  
 9-32 Section 6 of this article.

9-33 (d) A temporary certificate expires on the 180th day after  
 9-34 the date of issuance and may be renewed once on application to the  
 9-35 commissioner. An individual is not entitled to hold more than two  
 9-36 consecutive temporary certificates.

9-37 (e) Each individual who holds a temporary certificate under  
 9-38 this section must comply with the financial responsibility  
 9-39 requirements imposed under Section 6 of this article.

9-40 Sec. 17. CONDUCT TO COMPLY WITH CONTRACT. A licensee shall  
 9-41 prepare each claim for an insured represented by the licensee in  
 9-42 accordance with the terms and conditions of the contract of  
 9-43 insurance under which recovery is sought.

9-44 Sec. 18. CODE OF ETHICS. The commissioner, with guidance  
 9-45 from the public insurance adjusters examination advisory  
 9-46 committee, by rule shall adopt:

9-47 (1) a code of ethics for public insurance adjusters  
 9-48 that fosters the education of public insurance adjusters concerning  
 9-49 the ethical, legal, and business principles that should govern  
 9-50 their conduct;

9-51 (2) recommendations regarding the solicitation of the  
 9-52 adjustment of losses by public insurance adjusters; and

9-53 (3) any other principles of conduct or procedures that  
 9-54 the commissioner deems necessary and reasonable.

9-55 Sec. 19. PUBLIC INSURANCE ADJUSTER AUTHORITY. This article  
 9-56 does not limit or diminish the authority of a licensee to  
 9-57 investigate or adjust a loss to less than the authority for that  
 9-58 purpose that may be exercised by an adjuster licensed under Chapter  
 9-59 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article  
 9-60 21.07-4, Vernon's Texas Insurance Code).

9-61 Sec. 20. LICENSE RENEWAL. (a) A license issued under this  
 9-62 article expires on the second anniversary of the date of issuance  
 9-63 unless suspended or revoked by the commissioner. A licensee may  
 9-64 renew a license that has not expired and has not been suspended or  
 9-65 revoked by filing with the department a properly completed renewal  
 9-66 application, in the form prescribed by the commissioner, that  
 9-67 demonstrates continued compliance with the license requirements  
 9-68 imposed under this article or adopted by rule by the commissioner.  
 9-69 The completed renewal application must be accompanied by:

10-1 (1) a renewal fee in the amount determined by the  
 10-2 commissioner under Section 11(b) of this article; and

10-3 (2) evidence of compliance with the continuing  
 10-4 education requirements imposed under Section 21 of this article.

10-5 (b) A licensee must submit the completed renewal  
 10-6 application, evidence of compliance with the continuing education  
 10-7 requirements, and the renewal fee to the commissioner not later  
 10-8 than the 30th day before the second anniversary date of the license.  
 10-9 The original license continues in force until:

10-10 (1) the department issues the renewal license; or

10-11 (2) the commissioner issues an order revoking the  
 10-12 license.

10-13 (c) A person whose license has been expired for 90 days or  
 10-14 less may renew the license by filing a completed renewal  
 10-15 application in the form prescribed by the commissioner and evidence  
 10-16 of compliance with the continuing education requirements and by  
 10-17 paying to the department the required renewal fee and an additional  
 10-18 fee that is equal to one-half of the renewal fee for the license.

10-19 (d) A person whose license has been expired for more than 90  
 10-20 days but less than one year may not renew the license but is  
 10-21 entitled to a new license without taking the applicable examination  
 10-22 if the person submits to the department a new application, evidence  
 10-23 of compliance with the continuing education requirements, the  
 10-24 license fee, and an additional fee equal to one-half of the license  
 10-25 fee.

10-26 (e) A person whose license has been expired for one year or  
 10-27 more may not renew the license. The person may obtain a new license  
 10-28 by submitting to reexamination, if examination is required for  
 10-29 original issuance of the license, and by complying with the  
 10-30 requirements and procedures for obtaining an original license.

10-31 (f) The department may renew without reexamination an  
 10-32 expired license of a person who was licensed in this state, moved to  
 10-33 another state, and is currently licensed and has been in continual  
 10-34 practice in the other state up to and including the date of the  
 10-35 application. The person must pay to the department a fee that is  
 10-36 equal to the license fee.

10-37 (g) At least 30 days before the expiration of a license, the  
 10-38 department shall send written notice of the impending license  
 10-39 expiration to the licensee at the licensee's last known mailing  
 10-40 address according to the records of the department.

10-41 Sec. 21. CONTINUING EDUCATION REQUIREMENT. (a) Each  
 10-42 licensee must annually complete at least 15 hours of continuing  
 10-43 education courses. The commissioner by rule shall prescribe the  
 10-44 requirements for continuing education courses under this section.

10-45 (b) Notwithstanding Subsection (a) of this section, the  
 10-46 commissioner may waive any continuing education requirement for a  
 10-47 nonresident public insurance adjuster with a valid license from  
 10-48 another state having continuing education requirements  
 10-49 substantially equivalent to those of this state.

10-50 Sec. 22. COMMISSION. (a) Except as provided by Subsection  
 10-51 (b) of this section, a licensee may receive a commission for service  
 10-52 provided under this article consisting of an hourly fee, a flat  
 10-53 rate, a percentage of the total amount paid by an insurer to resolve  
 10-54 a claim, or another method of compensation. The total commission  
 10-55 received may not exceed 10 percent of the amount of the insurance  
 10-56 settlement on the claim.

10-57 (b) A licensee may not receive a commission consisting of a  
 10-58 percentage of the total amount paid by an insurer to resolve a claim  
 10-59 on a claim on which the insurer, not later than 72 hours after the  
 10-60 date on which the loss is reported to the insurer, either pays or  
 10-61 commits in writing to pay to the insured the policy limit of the  
 10-62 insurance policy in accordance with Article 6.13 or Section 862.053  
 10-63 of this code. The licensee is entitled to reasonable compensation  
 10-64 from the insured for services provided by the licensee on behalf of  
 10-65 the insured, based on the time spent on a claim that is subject to  
 10-66 this subsection and expenses incurred by the licensee, until the  
 10-67 claim is paid or the insured receives a written commitment to pay  
 10-68 from the insurer.

10-69 (c) Except for the payment of a commission by the insured,

11-1 all persons paying any proceeds of a policy of insurance or making  
 11-2 any payment affecting an insured's rights under a policy of  
 11-3 insurance must:

11-4 (1) include the insured as a payee on the payment draft  
 11-5 or check; and

11-6 (2) require the written signature and endorsement of  
 11-7 the insured on the payment draft or check.

11-8 (d) A public insurance adjuster may not accept any payment  
 11-9 that violates Subsection (c) of this section.

11-10 (e) Notwithstanding any authorization the insured may have  
 11-11 given to a public insurance adjuster, a public insurance adjuster  
 11-12 may not sign and endorse any payment draft or check on behalf of an  
 11-13 insured.

11-14 Sec. 23. PROHIBITED CONDUCT. (a) A licensee may not,  
 11-15 directly or indirectly, act within this state as a public insurance  
 11-16 adjuster without having first entered into a contract, in writing,  
 11-17 on a form approved by the commissioner, executed in duplicate by the  
 11-18 licensee and the insured or the insured's duly authorized  
 11-19 representative. One copy of the contract shall be kept on file in  
 11-20 the state by the licensee and must be available at all times for  
 11-21 inspection, without notice, by the commissioner or the  
 11-22 commissioner's duly authorized representative.

11-23 (b) A licensee may not solicit or attempt to solicit a  
 11-24 client for employment during the progress of a loss-producing  
 11-25 natural disaster occurrence.

11-26 (c) A licensee may not solicit or attempt to solicit  
 11-27 business on a loss or a claim in person, by telephone, or in any  
 11-28 other manner at any time except between the hours of 9 a.m. and 9  
 11-29 p.m. on a weekday or a Saturday, and between noon and 9 p.m. on a  
 11-30 Sunday. This subsection does not prohibit a licensee from  
 11-31 accepting phone calls or personal visits during the prohibited  
 11-32 hours from an insured upon the insured's initiation.

11-33 (d) A licensee may not use any form of contract that is not  
 11-34 approved by the commissioner. The contract must contain a  
 11-35 provision allowing the client to rescind the contract by written  
 11-36 notice to the licensee within 72 hours of signature and must include  
 11-37 a notice in 12-point boldface type, prominently displayed, the  
 11-38 statement: "WE REPRESENT THE INSURED ONLY." The commissioner by  
 11-39 rule may require additional prominently displayed notice  
 11-40 requirements in the contract as the commissioner deems necessary.

11-41 (e) A licensee may not knowingly make any false report to  
 11-42 the licensee's employer or client and may not divulge to any other  
 11-43 person, except as the law may require, any information obtained  
 11-44 except at the direction of the employer or the client for whom the  
 11-45 information is obtained.

11-46 (f) A licensee may not use a badge in connection with the  
 11-47 official activities of the licensee's business.

11-48 (g) A licensee may not permit an employee or agent, in the  
 11-49 employee's or agent's own name, to advertise, solicit or engage  
 11-50 clients, furnish reports or present bills to clients, or in any  
 11-51 manner conduct business for which a license is required under this  
 11-52 article.

11-53 (h) A licensee may not render services or perform acts that  
 11-54 constitute the practice of law, including the giving of legal  
 11-55 advice to any person in the licensee's capacity as a public  
 11-56 insurance adjuster.

11-57 (i) A licensee may not represent an insured on a claim or  
 11-58 charge a fee to an insured while representing the insurance carrier  
 11-59 against which the claim is made.

11-60 (j) A licensee may not solicit or attempt to solicit  
 11-61 business, directly or indirectly, or act in any manner on a bodily  
 11-62 injury loss covered by a life, health, or accident insurance policy  
 11-63 or on any claim for which the client is not an insured under the  
 11-64 insurance policy.

11-65 (k) A licensee may not, without the knowledge and consent of  
 11-66 the insured in writing, acquire an interest in salvaged property  
 11-67 that is the subject of a claim adjusted by the licensee.

11-68 (l) A licensee may not participate directly or indirectly in  
 11-69 the reconstruction, repair, or restoration of damaged property that

12-1 is the subject of a claim adjusted by the licensee or engage in any  
 12-2 other activities that may reasonably be construed as presenting a  
 12-3 conflict of interest, including soliciting or accepting any  
 12-4 remuneration from, or having a financial interest in, any salvage  
 12-5 firm, repair firm, or other firm that obtains business in  
 12-6 connection with any claim the licensee has a contract or agreement  
 12-7 to adjust.

12-8 (m) A licensee may not:

12-9 (1) use any misrepresentation to solicit a contract or  
 12-10 agreement to adjust a claim;

12-11 (2) advance money to any potential client or insured;

12-12 (3) pay, allow, or give, or offer to pay, allow, or  
 12-13 give, directly or indirectly, to a person who is not a licensed  
 12-14 public insurance adjuster a fee, commission, or other valuable  
 12-15 consideration for the referral of an insured to the public  
 12-16 insurance adjuster based on the insured entering into a contract  
 12-17 with that public insurance adjuster; a licensee may not otherwise  
 12-18 offer to pay a fee, commission, or other valuable consideration,  
 12-19 exceeding \$100, to a person not licensed as a public insurance  
 12-20 adjuster for referring an insured to the licensee;

12-21 (4) use any letterhead, advertisement, or other  
 12-22 printed matter, or use any other means, to represent that the  
 12-23 licensee is an instrumentality of the federal government, of a  
 12-24 state, or of a political subdivision of a state; or

12-25 (5) use a name different from that under which the  
 12-26 licensee is currently licensed in an advertisement, solicitation,  
 12-27 or contract for business.

12-28 Sec. 24. RECORD MAINTENANCE. (a) A licensee shall keep a  
 12-29 complete record in the state of each of the licensee's transactions  
 12-30 as a public insurance adjuster. The records shall include all of  
 12-31 the following:

12-32 (1) the name of the insured;  
 12-33 (2) the date, location, and amount of the loss;  
 12-34 (3) a copy of the contract between the licensee and the  
 12-35 insured;

12-36 (4) the name of the insurer and the amount, expiration  
 12-37 date, and number of each policy under which the loss is covered;

12-38 (5) an itemized statement of the recoveries by the  
 12-39 insured from the sources known to the licensee;

12-40 (6) the total compensation received for the  
 12-41 adjustment; and

12-42 (7) an itemized statement of disbursements made by the  
 12-43 licensee from recoveries received on behalf of the insured.

12-44 (b) Records required to be kept under this section shall be  
 12-45 maintained in the state for at least five years after the  
 12-46 termination of a transaction with the insured and must be open to  
 12-47 examination by the commissioner.

12-48 Sec. 25. FIDUCIARY CAPACITY. (a) All funds received as  
 12-49 claim proceeds by a licensee acting as a public insurance adjuster  
 12-50 are received and held by the licensee in a fiduciary capacity. A  
 12-51 licensee who diverts or appropriates any fiduciary funds for the  
 12-52 licensee's personal use is guilty of theft and is punishable for  
 12-53 theft as provided by law.

12-54 (b) An applicant for a license to act as a public insurance  
 12-55 adjuster must, as part of the application, endorse an authorization  
 12-56 for disclosure to the commissioner of all financial records of any  
 12-57 funds the public insurance adjuster holds as a fiduciary. The  
 12-58 authorization shall continue in force and effect for as long as the  
 12-59 licensee continues to be licensed under this article.

12-60 Sec. 26. NOTICE TO LAST ADDRESS. Notice by registered mail,  
 12-61 return receipt requested, sent to the last known address of an  
 12-62 applicant for a license, licensee, or other person to whom notice is  
 12-63 required to be sent under this article, as reflected by the records  
 12-64 of the department, constitutes sufficient notice under this  
 12-65 article.

12-66 Sec. 27. RELOCATION TO ANOTHER STATE. (a) Not later than  
 12-67 the 30th day after moving from one state to another state, a  
 12-68 nonresident or resident public insurance adjuster licensed in this  
 12-69 state shall file with the department:

13-1 (1) the licensee's new address; and  
 13-2 (2) proof of authorization to engage in the business  
 13-3 of public insurance adjuster in the new state of residence if that  
 13-4 state requires licensure of public insurance adjusters.

13-5 (b) The department may not charge a fee or require a license  
 13-6 application under Subsection (a) of this section.

13-7 Sec. 28. ADVERTISEMENTS. Every advertisement by a licensee  
 13-8 soliciting or advertising business must display the licensee's  
 13-9 name, address, and license number as they appear in the records of  
 13-10 the commissioner.

13-11 Sec. 29. RULES. The commissioner may adopt reasonable and  
 13-12 necessary rules to implement this article, including rules  
 13-13 regarding the:

13-14 (1) qualifications of licensees, in addition to those  
 13-15 prescribed in this article, that are necessary to promote and  
 13-16 protect the public interest;

13-17 (2) regulation of the conduct of licensees;

13-18 (3) prescription of fees required by Section 11 of  
 13-19 this article; and

13-20 (4) advertisements under Section 28 of this article  
 13-21 and the definition of "advertisement" as the term is used in that  
 13-22 section.

13-23 Sec. 30. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

13-24 (a) The commissioner may deny an application for a license under  
 13-25 this article or suspend or revoke a license issued under this  
 13-26 article on the basis of:

13-27 (1) a violation of this article or of any rule adopted  
 13-28 by the commissioner under this article;

13-29 (2) a cause that constitutes grounds for denial of an  
 13-30 original license;

13-31 (3) wilful misrepresentation or fraud in obtaining a  
 13-32 license;

13-33 (4) failure to pass a required license examination;

13-34 (5) the misappropriation or conversion of money  
 13-35 required to be held in a fiduciary capacity;

13-36 (6) material misrepresentation, with intent to  
 13-37 deceive, of the terms of an insurance contract;

13-38 (7) engaging in a fraudulent transaction;

13-39 (8) demonstrated incompetence or untrustworthiness in  
 13-40 the conduct of the licensee's affairs under the license, as  
 13-41 determined by the commissioner;

13-42 (9) conviction of a felony by a final judgment in a  
 13-43 court of competent jurisdiction; or

13-44 (10) material misrepresentation, with intent to  
 13-45 deceive, of the person's status as a public insurance adjuster.

13-46 (b) If the department proposes to refuse to issue an  
 13-47 original license under this article or to suspend, revoke, or  
 13-48 refuse to renew a license under this article, the person affected is  
 13-49 entitled to notice and hearing as provided by Section 3A(b),  
 13-50 Article 21.01-2 of this code.

13-51 (c) A final order entered as a result of a hearing under this  
 13-52 section may be appealed to a court of competent jurisdiction as  
 13-53 provided by Subchapter D, Chapter 36 of this code.

13-54 (d) An order suspending a license issued under this article  
 13-55 must specify the period of the suspension not to exceed 12 months.

13-56 (e) The holder of a license that is revoked or suspended for  
 13-57 cause shall surrender the license to the commissioner on demand.

13-58 (f) The commissioner may issue a license or reinstate a  
 13-59 suspended or revoked license on a finding that the cause for  
 13-60 suspension, revocation, or refusal no longer exists.

13-61 (g) A person whose license is suspended under this article  
 13-62 may apply for a new license only after the expiration of the period  
 13-63 of suspension. A person whose license is revoked or whose  
 13-64 application for a license is denied, except for a failure to submit  
 13-65 a completed application, may not apply for a new license until the  
 13-66 fifth anniversary of:

13-67 (1) the effective date of the denial or revocation; or

13-68 (2) if the applicant or licensee seeks judicial review  
 13-69 of the department's action, the date of the final court order or

14-1 decree affirming that action.

14-2 (h) The commissioner may deny a timely application filed  
 14-3 under Subsection (g) of this section if the applicant does not show  
 14-4 good cause why the denial of the previous license application or the  
 14-5 revocation of the license should not be considered a bar to the  
 14-6 issuance of the new license. This subsection does not apply to an  
 14-7 applicant whose license application was denied for failure to:

14-8 (1) pass the required written examination; or

14-9 (2) submit a properly completed license application.

14-10 (i) The commissioner, in lieu of suspending or revoking a  
 14-11 license for a violation of this article or a rule adopted under this  
 14-12 article, may impose on a licensee an administrative penalty in an  
 14-13 amount not to exceed \$2,000 per violation if the commissioner  
 14-14 determines that such action better serves the purposes of this  
 14-15 article.

14-16 (j) The department may institute a disciplinary proceeding  
 14-17 against a licensee for conduct that the licensee committed before  
 14-18 the effective date of a voluntary surrender or automatic forfeiture  
 14-19 of the license. In the proceeding, the fact that the licensee has  
 14-20 surrendered or forfeited the license does not affect the licensee's  
 14-21 culpability for the conduct.

14-22 Sec. 31. AUTOMATIC FINES. Section 5A, Article 21.01-2 of  
 14-23 this code, applies to violations of this article.

14-24 Sec. 32. CRIMINAL PENALTY; SANCTIONS. (a) A person  
 14-25 commits an offense if the person violates this article. Except as  
 14-26 provided by Section 25(a) of this article, an offense under this  
 14-27 subsection is a Class B misdemeanor.

14-28 (b) In addition to the criminal penalties imposed under  
 14-29 Subsection (a) of this section, a person in violation of this  
 14-30 article is subject to the sanctions provided by Section 7, Article  
 14-31 21.21 of this code, as if the person had violated an order under  
 14-32 that section.

14-33 SECTION 3.03. Section 3, Article 21.01, Insurance Code, is  
 14-34 amended to read as follows:

14-35 Sec. 3. APPLICATION. Except as otherwise provided by this  
 14-36 code, this subchapter applies to each person licensed in accordance  
 14-37 with:

14-38 (1) Section 4, Article 1.14-2, of this code;

14-39 (2) Section 7, Article 3.75, of this code;

14-40 (3) Subsection (c), Article 5.13-1, of this code;

14-41 (4) Article 10.37-3 of this code;

14-42 (5) Article 16.24A of this code;

14-43 (6) Section 9, Article 17.25, of this code;

14-44 (7) Article 21.07 of this code;

14-45 (8) Article 21.07-1 of this code;

14-46 (9) Chapter 29, Acts of the 54th Legislature, Regular  
 14-47 Session, 1955 (Article 21.07-2, Vernon's Texas Insurance Code);

14-48 (10) the Managing General Agents' Licensing Act  
 14-49 (Article 21.07-3, Vernon's Texas Insurance Code);

14-50 (11) Chapter 407, Acts of the 63rd Legislature,  
 14-51 Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance  
 14-52 Code);

14-53 (12) Article 21.07-5 of this code;

14-54 (13) Article 21.07-6 of this code;

14-55 (14) [~~13~~] Article 21.07-7 of this code;

14-56 (15) [~~14~~] Article 21.09 of this code;

14-57 (16) [~~15~~] Article 21.11 of this code;

14-58 (17) [~~16~~] Article 21.14 of this code;

14-59 (18) [~~17~~] Article 21.14-1 of this code;

14-60 (19) [~~18~~] Article 21.14-2 of this code; or

14-61 (20) [~~19~~] Article 23.23A of this code.

14-62 SECTION 3.04. (a) If the commissioner of insurance elects  
 14-63 to appoint a public insurance adjusters examination advisory  
 14-64 committee under Subsection (c), Section 8, Article 21.07-5,  
 14-65 Insurance Code, as added by this article, the commissioner shall  
 14-66 appoint the members of the committee not later than the 60th day  
 14-67 after the effective date of this Act. If, on the effective date of  
 14-68 this Act, the commissioner has a contract with a testing service for  
 14-69 the examination of adjuster applicants under Article 21.07-5,

Insurance Code, as added by this article, the commissioner may add the public insurance adjusters examination to the scope of that contract, without seeking additional bids, at a fee not greater than the highest adjuster examination fee charged.

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

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

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

ARTICLE 4. EFFECTIVE DATE

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

\* \* \* \* \*