

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

8 (b) "Adjuster" shall not include:

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

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

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

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

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

24 (6) any person who handles claims arising under life,

1 accident and health insurance policies;

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

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

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

13 SECTION 2. Subchapter A, Chapter 21, Insurance Code, is
14 amended by adding Article 21.07-5 to read as follows:

15 Art. 21.07-5. PUBLIC INSURANCE ADJUSTERS

16 Sec. 1. DEFINITIONS. In this article:

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

19 (2) "Person" includes an individual, firm, company,
20 association, organization, partnership, limited liability company,
21 or corporation.

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

23 (i) an individual who, for compensation:

24 (a) acts on behalf of, or aids in any
25 manner, an insured in negotiating for or effecting the settlement
26 of a claim or claims for loss or damage under any policy of
27 insurance covering real or personal property; or

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

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

9 (B) "Public insurance adjuster" does not
10 include:

11 (i) an officer or employee of the federal or
12 state government or of a political subdivision of the state
13 government while the officer or employee is engaged in the
14 performance of official duties;

15 (ii) a charitable organization duly
16 incorporated under the laws of this state that is organized and
17 maintained for the public good and not for private profit;

18 (iii) an attorney engaged in the
19 performance of the attorney's professional duties;

20 (iv) insurers admitted to do business in
21 the state, and agents licensed by this state, engaged in the
22 performance of their duties in connection with insurance
23 transactions;

24 (v) the legal owner of personal property
25 that has been sold under a conditional sales agreement or a
26 mortgagee under the terms of a chattel mortgage;

27 (vi) any salaried office employee who

1 performs exclusively clerical or administrative duties attendant
2 to the disposition of the business regulated by this article;

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

7 (viii) a private investigator licensed
8 under Chapter 1702, Occupations Code, while acting within the scope
9 of that license.

10 Sec. 2. NOT LAW LICENSE. Nothing in this article shall be
11 construed as entitling any person who is not an active member of the
12 State Bar of Texas to practice law in the state.

13 Sec. 3. LICENSE REQUIRED; EXEMPTION. (a) A person may not
14 act as a public insurance adjuster in this state, except as provided
15 by Section 17 of this article, or hold himself or herself out to be a
16 public insurance adjuster in this state, unless the person holds a
17 license issued by the commissioner under Section 5 or Section 16 of
18 this article.

19 (b) A license is not required for:

20 (1) an attorney licensed by this state; or

21 (2) a licensed local recording agent or a solicitor
22 for a local recording agent while acting for an insured concerning a
23 loss under a policy issued by that agent.

24 (c) Any contract for services regulated by this article that
25 is entered into by an insured with a person who is in violation of
26 Subsection (a) of this section may be voided at the option of the
27 insured, and if a contract is so voided, the insured shall not be

1 liable for the payment of any past services rendered, or future
2 services to be rendered, by that person under that contract or
3 otherwise.

4 (d) If the commissioner believes that a person is engaging
5 in acts or practices in violation of Subsection (a) of this section,
6 the commissioner may, without notice or hearing, issue and cause to
7 be served on the person an order requiring the person to immediately
8 cease and desist from engaging further in those acts or practices.

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

12 (b) The completed application must be notarized and be
13 accompanied by a license application fee, as provided by Section 12
14 of this article, for each application submitted. The application
15 fee is nonrefundable.

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

- 21 (1) is at least 18 years of age;
22 (2) is a citizen of the United States;
23 (3) is a resident of the state;
24 (4) is trustworthy and of a moral character that
25 reasonably ensures that the applicant will conduct the business of
26 a public insurance adjuster fairly and in good faith without
27 detriment to the public;

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

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

7 (A) real and personal property values; and

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

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

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

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

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

24 (11) has complied with the security requirements
25 imposed under Section 6 of this article; and

26 (12) has complied with any other requirements under
27 applicable state law, including providing a complete set of

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

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

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

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

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

9 (3) be payable to the commissioner for the use and
10 benefit of any person who recovers a judgment against the
11 individual licensee;

12 (4) specifically authorize recovery by the
13 commissioner of the damages sustained if the licensee is determined
14 by the commissioner to be guilty of fraud or unfair practices in
15 connection with the licensee's business as a public insurance
16 adjuster; and

17 (5) be conditioned on the faithful performance of the
18 licensee in connection with the licensee's business as a public
19 insurance adjuster.

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

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

1 (2) deposit with the comptroller cash in the amount of
2 \$50,000 or securities of the class authorized by Articles 2.08 and
3 2.10 of this code that have a fair market value of at least \$50,000,
4 to be held exclusively for the protection of a person or persons who
5 are entitled to recover a final judgment against the licensee in
6 connection with the licensee's business as a public insurance
7 adjuster.

8 (d) A professional liability policy provided by a public
9 insurance adjuster's employer constitutes satisfactory compliance
10 with the requirements of this section if the employer's
11 professional liability policy has a minimum liability limit of
12 \$250,000 for all employees.

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

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

20 (1) does not have any outstanding unsecured
21 liabilities; or

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

27 (g) Securities deposited under this section may be

1 exchanged periodically for other qualified securities.

2 (h) A binding commitment to issue an insurance policy or
3 bond or the tender of the securities in connection with a license
4 application is sufficient evidence of the applicant's ability to
5 comply with this section on issuance of a license.

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

12 (j) A licensee must comply with the security requirements of
13 this section for the license to remain effective. Failure to comply
14 with the security requirements will result in immediate forfeiture
15 or suspension of the license.

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

20 (b) The license of a public insurance adjuster who fails to
21 maintain a surety bond in compliance with this section shall be
22 immediately suspended and shall not be reinstated until an
23 application for reinstatement, in the form prescribed by the
24 commissioner, is filed with a proper bond.

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

27 (1) for any reason that would justify a refusal to

1 issue, or a suspension or revocation of, a license; or

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

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

11 Sec. 8. LICENSE AUTHORIZATION. A license issued under
12 Section 5 or Section 16 of this article shall include, but not be
13 limited to, adjusting claims for fire and allied coverages,
14 burglary, flood, and all other property claims, both real and
15 personal, and loss of income.

16 Sec. 9. EXAMINATION FOR LICENSE; ADVISORY COMMITTEE.

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

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

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

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

27 (3) knowledge of:

1 (A) Article 21.21 of this code;

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

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

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

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

10 (F) the duties and responsibilities of public
11 insurance adjusters under the law.

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

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

27 (e) An examination is not required for the renewal of a

1 license issued under Section 5 or Section 16 of this article.

2 Sec. 10. EXAMINATION; FORM; TIME. (a) The answers of the
3 applicant to an examination required under this article shall be
4 made by the applicant in writing. A written examination may be
5 supplemented by oral examination.

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

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

12 (d) The scheduling and administration of examinations
13 required under Section 9 of this article shall be effected by
14 persons approved by the commissioner.

15 Sec. 11. FORM OF LICENSE. The commissioner shall prescribe
16 the form of the licenses issued under Section 5 or Section 16 of
17 this article, which must contain:

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

20 (2) the date of issuance and the date of expiration of
21 the license; and

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

24 Sec. 12. FEE FOR LICENSE, RENEWAL, AND EXAMINATION.

25 (a) The commissioner shall collect in advance the following
26 nonrefundable fees:

27 (1) for a public insurance adjuster license, an

1 application fee in an amount to be determined by rule by the
2 commissioner;

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

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

8 (4) for a public insurance adjuster trainee
9 certificate under Section 17 of this article, a registration fee in
10 an amount to be determined by rule by the commissioner.

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

14 Sec. 13. USE OF FEES COLLECTED. (a) When collected, the
15 fees authorized by this article shall be deposited in the State
16 Treasury to the credit of the Texas Department of Insurance
17 operating fund.

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

1 considered necessary, and all related expenses shall be paid from
2 the fees.

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

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

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

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

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

23 Sec. 15. LICENSE NOT ASSIGNABLE. A license issued under
24 this article is not assignable.

25 Sec. 16. NONRESIDENT LICENSE. (a) The commissioner may
26 issue a nonresident license to an applicant for a public insurance
27 adjuster license who is not a permanent resident of the state on

1 determining that the application meets the requirements of this
2 article, that the nonresident application license fee has been
3 paid, and that the applicant is an individual who:

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

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

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

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

21 (3) is self-employed as a public insurance adjuster or
22 associated with or employed by a public insurance adjusting firm or
23 other public insurance adjuster;

24 (4) is trustworthy and of a moral character that
25 reasonably ensures that the applicant will conduct the business of
26 a public insurance adjuster fairly and in good faith without
27 detriment to the public;

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

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

7 (A) real and personal property values; and

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

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

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

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

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

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

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

22 (12) files a bond in accordance with Section 6 of this
23 article in the amount required by Subsection (b) of this section;

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

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

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

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

4 (c) A nonresident licensee shall comply with all of the
5 requirements of this article in performing any of the activities of
6 a public insurance adjuster in this state, including the
7 requirements on record maintenance in Section 25 of this article.
8 The failure of a nonresident licensee to properly maintain records
9 in accordance with this article and make them available to the
10 department on request constitutes grounds for the immediate
11 suspension of the nonresident license issued under this article.

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

17 (e) After licensure as a nonresident public insurance
18 adjuster, as a condition of doing business in this state, the
19 licensee must annually, not later than January 1 and on a form
20 prescribed by the commissioner, submit an affidavit certifying that
21 the licensee is familiar with and understands the laws specified in
22 Section 9 of this article, the applicable rules adopted under those
23 laws, and the terms and conditions of the types of insurance
24 contracts that provide coverage on real and personal property.
25 Compliance with the filing requirement provided by this subsection
26 is necessary to the issuance, continuation, reinstatement, or
27 renewal of a nonresident public insurance adjuster license.

1 Sec. 17. REGISTRATION PROGRAM FOR TRAINEES. (a) A public
2 insurance adjuster trainee must register with the department for a
3 temporary certificate under this section. An applicant for a
4 temporary certificate as a trainee must apply to the commissioner
5 on a form prescribed by the commissioner. The form must be
6 accompanied by a nonrefundable registration fee as prescribed by
7 Section 12(a)(4) of this article.

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

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

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

21 (e) Each individual who holds a temporary certificate under
22 this section must comply with the security requirements imposed
23 under Section 6 of this article. The security requirement may be
24 fulfilled by a surety bond purchased by the sponsoring licensee if
25 the bond also covers the acts described by Section 6(b) of this
26 article with regard to the temporary certificate holder. The
27 security requirement may also be fulfilled if the sponsoring

1 licensee complies with the requirements in Section 6(c)(1) of this
2 article and the temporary certificate holder is an employee of the
3 sponsoring licensee covered under a professional liability policy
4 or similar policy or contract of professional liability coverage
5 purchased by the sponsoring licensee in compliance with Section
6 6(c)(1) of this article.

7 Sec. 18. CONDUCT TO COMPLY WITH CONTRACT. A licensee shall
8 prepare each claim for an insured represented by the licensee in
9 accordance with the terms and conditions of the contract of
10 insurance under which recovery is sought.

11 Sec. 19. CODE OF ETHICS. The commissioner by rule shall
12 adopt:

13 (1) a code of ethics for public insurance adjusters
14 that fosters the education of public insurance adjusters concerning
15 the ethical, legal, and business principles that should govern
16 their conduct;

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

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

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

1 (b) A licensee is exempt from:

2 (1) Articles 21.01, 21.02, 21.04, 21.07, and 21.14 of
3 this code;

4 (2) Article 21.07-1, Insurance Code, as added by
5 Chapter 703, Acts of the 77th Legislature, Regular Session, 2001;

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

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

10 Sec. 21. LICENSE RENEWAL. (a) A license issued under this
11 article expires on the second anniversary of the date of issuance
12 unless suspended or revoked by the commissioner. A licensee may
13 renew a license that has not expired or has not been suspended or
14 revoked by filing with the department a properly completed renewal
15 application, in the form prescribed by the commissioner, that
16 demonstrates continued compliance with the license requirements
17 imposed under this article or adopted by rule by the commissioner.
18 The completed renewal application must be accompanied by:

19 (1) a renewal fee in the amount determined by the
20 commissioner under Section 12(b) of this article; and

21 (2) evidence of compliance with the continuing
22 education requirements imposed under Section 22 of this article.

23 (b) A licensee must submit the completed renewal
24 application, evidence of compliance with the continuing education
25 requirements, and the renewal fee to the commissioner not later
26 than the 30th day before the second anniversary date of the license.
27 The original license continues in force until:

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

2 (2) the commissioner issues an order revoking the
3 license.

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

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

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

22 (f) The department may renew without reexamination an
23 expired license of a person who was licensed in this state, moved to
24 another state, and is currently licensed and has been in continual
25 practice in the other state up to and including the date of the
26 application. The person must pay to the department a fee that is
27 equal to the license fee.

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

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

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

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

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

13 Sec. 22. CONTINUING EDUCATION REQUIREMENT. Each licensee
14 must annually complete at least 15 hours of continuing education
15 courses. The commissioner by rule shall prescribe the requirements
16 for continuing education courses under this section.

17 Sec. 23. CONTINGENT FEES. (a) Except as provided by
18 Subsection (b) of this section, a licensee may receive a contingent
19 fee for adjusting a claim under this article. A contingent fee
20 collected under this section may not exceed 10 percent of the amount
21 of the insurance settlement on the claim.

22 (b) A licensee may not receive a contingent fee on a claim
23 for which an insurance company, not later than 72 hours after the
24 date on which the loss is reported to the insurance company, either
25 pays or commits in writing to pay to the insured the policy limit of
26 the insurance policy in accordance with Section 862.053 of this
27 code. The licensee is entitled to reasonable compensation from the

1 insured for services provided by the licensee on behalf of the
2 insured, based on the time spent on a claim that is subject to this
3 subsection and expenses incurred by the licensee, until the claim
4 is paid or the insured receives a written commitment to pay from the
5 insurance company.

6 Sec. 24. PROHIBITED CONDUCT. (a) A licensee may not,
7 directly or indirectly, act within this state as a public insurance
8 adjuster without having first entered into a contract, in writing,
9 on a form approved by the commissioner, executed in duplicate by the
10 licensee and the insured or the insured's duly authorized
11 representative. One copy of the contract shall be kept on file by
12 the licensee and must be available at all times for inspection,
13 without notice, by the commissioner or the commissioner's duly
14 authorized representative.

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

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

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

1 notice to the licensee within 72 hours of signature and must include
2 in 12-point boldface type, prominently displayed, the statement:
3 "WE REPRESENT THE INSURED ONLY."

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

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

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

16 (h) A licensee may not render legal advice to any person in
17 the licensee's capacity as a public insurance adjuster.

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

21 (j) A licensee may not solicit or attempt to solicit
22 business, directly or indirectly, on a bodily injury loss covered
23 by a life, health, or accident insurance policy.

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

27 (l) A licensee may not participate directly or indirectly in

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

9 (m) A licensee may not:

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

12 (2) advance money to any potential client or insured
13 in order to obtain business;

14 (3) offer to pay a fee, commission, or other valuable
15 consideration, exceeding \$100, to a person for referring a loss to
16 the licensee unless the licensee employs the person for that
17 purpose and the person is licensed to act as a public insurance
18 adjuster under this article;

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

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

26 Sec. 25. RECORD MAINTENANCE. (a) A licensee shall keep a
27 complete record of each of the licensee's transactions as a public

1 insurance adjuster. The records shall include all of the
2 following:

3 (1) the name of the insured;

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

5 (3) a copy of the contract between the licensee and the
6 insured;

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

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

11 (6) the total compensation received for the
12 adjustment; and

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

15 (b) Records required to be kept under this section shall be
16 maintained for at least five years after the termination of a
17 transaction with the insured and must be open to examination by the
18 commissioner.

19 Sec. 26. FIDUCIARY CAPACITY. (a) All funds received as
20 claim proceeds by a licensee acting as a public insurance adjuster
21 are received and held by the licensee in a fiduciary capacity. A
22 licensee who diverts or appropriates any fiduciary funds for the
23 licensee's personal use is guilty of theft and is punishable for
24 theft as provided by law.

25 (b) An applicant for a license to act as a public insurance
26 adjuster must, as part of the application, endorse an authorization
27 for disclosure to the commissioner of all financial records of any

1 funds the public insurance adjuster holds as a fiduciary. The
2 authorization shall continue in force and effect for as long as the
3 licensee continues to be licensed under this article.

4 Sec. 27. NOTICE TO LAST ADDRESS. Notice by registered mail,
5 return receipt requested, sent to the last known address of an
6 applicant for a license, licensee, or other person to whom notice is
7 required to be sent under this article, as reflected by the records
8 of the department, constitutes sufficient notice under this
9 article.

10 Sec. 28. ADVERTISEMENTS. Every advertisement by a licensee
11 soliciting or advertising business must display the licensee's
12 name, address, and license number as they appear in the records of
13 the commissioner. The commissioner may adopt rules defining the
14 term "advertisement" as used in this section.

15 Sec. 29. RULES. The commissioner may adopt reasonable and
16 necessary rules to implement this article, including rules
17 regarding the:

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

21 (2) regulation of the conduct of licensees; and

22 (3) prescription of fees required by Section 12 of
23 this article.

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

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

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

3 (2) a cause that constitutes grounds for denial of an
4 original license;

5 (3) wilful misrepresentation or fraud in obtaining a
6 license;

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

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

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

12 (7) engaging in a fraudulent transaction;

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

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

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

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

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

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

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

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

8 (g) A person whose license is suspended under this article
9 may apply for a new license only after the expiration of the period
10 of suspension. A person whose license is revoked or whose
11 application for a license is denied may not apply for a new license
12 until the fifth anniversary of:

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

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

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

23 (1) pass the required written examination; or

24 (2) submit a properly completed license application.

25 (i) The commissioner, in lieu of suspending or revoking a
26 license for a violation of this article or a rule adopted under this
27 article, may impose on a licensee an administrative penalty in an

1 amount not to exceed \$1,000 per violation if the commissioner
2 determines that such action better serves the purposes of this
3 article.

4 (j) The department may institute a disciplinary proceeding
5 against a licensee for conduct that the licensee committed before
6 the effective date of a voluntary surrender or automatic forfeiture
7 of the license. In the proceeding, the fact that the licensee has
8 surrendered or forfeited the license does not affect the licensee's
9 culpability for the conduct.

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

12 Sec. 32. CRIMINAL PENALTY; SANCTIONS. (a) A person
13 commits an offense if the person violates this article. Except as
14 provided by Section 26(a) of this article, an offense under this
15 subsection is a misdemeanor punishable by:

16 (1) a fine in an amount not to exceed \$1,000;

17 (2) confinement in county jail for a term not to exceed
18 six months; or

19 (3) both the fine and confinement.

20 (b) In addition to the criminal penalties imposed under
21 Subsection (a) of this section, a person in violation of this
22 article is subject to the sanctions provided by Section 7, Article
23 21.21 of this code, as if the person had violated an order under
24 that section.

25 SECTION 3. (a) The commissioner of insurance shall appoint
26 the members of the public insurance adjusters examination advisory
27 committee created under Subsection (c), Section 9, Article 21.07-5,

1 Insurance Code, as added by this Act, not later than the 60th day
2 after the effective date of this Act.

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

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

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

19 SECTION 4. This Act takes effect June 1, 2003, 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 effect on that
23 date, this Act takes effect September 1, 2003.