

By: Eiland

H.B. No. 2699

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the requirements for an insurance adjuster license.

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

4 SECTION 1. Section 4101.001(a), Insurance Code, is amended  
5 to read as follows:

6 (a) In this chapter:

7 (1) "Adjuster" [~~,"adjuster"~~] means a person [~~an~~  
8 ~~individual~~] who:

9 (A) [~~(1)~~] investigates or adjusts losses on  
10 behalf of an insurer as an independent contractor or as an employee  
11 of:

12 (i) [~~(A)~~] an adjustment bureau;

13 (ii) [~~(B)~~] an association;

14 (iii) [~~(C)~~] a general property and casualty  
15 agent or personal lines property and casualty agent;

16 (iv) [~~(D)~~] an independent contractor;

17 (v) [~~(E)~~] an insurer; or

18 (vi) [~~(F)~~] a managing general agent;

19 (B) [~~(2)~~] supervises the handling of claims; or

20 (C) [~~(3)~~] investigates, adjusts, supervises the  
21 handling of, or settles workers' compensation claims, including  
22 claims arising from services provided through a certified workers'  
23 compensation health care network as authorized under Chapter 1305,  
24 on behalf of an administrator, as defined by Chapter 4151, or on

1 behalf of an insurance carrier, as defined by Section 401.011,  
2 Labor Code.

3 (2) "Automated claims adjudication system" means a  
4 computer program designed for the collection, data entry,  
5 calculation, and final resolution of property insurance claims  
6 that:

7 (A) a licensed independent adjuster, licensed  
8 agent, or supervised individual uses in accordance with this  
9 subchapter;

10 (B) complies with all requirements for the  
11 payment of claims under this code; and

12 (C) a licensed independent adjuster that is an  
13 officer of a licensed business entity under this chapter certifies  
14 as compliant with this subdivision.

15 (3) "Business entity" means a corporation,  
16 association, partnership, limited liability company, limited  
17 liability partnership, or other legal entity.

18 (4) "Catastrophe" means an event that is declared by  
19 the governor to be a state of disaster and that results in:

20 (A) a large number of deaths or injuries;

21 (B) extensive damage or the destruction of  
22 critical facilities;

23 (C) an overwhelming demand on state and local  
24 response services and severely affects the ability of those  
25 services to begin and sustain response activities; or

26 (D) severe long-term effects on general economic  
27 activity.

1           (5) "Home state," with respect to an adjuster, means:

2           (A) the state in which the adjuster maintains the  
3 adjuster's principal place of residence or business and is licensed  
4 to act as a resident adjuster; or

5           (B) if the state of the adjuster's principal  
6 place of residence or business does not license adjusters for the  
7 line of authority sought, a state in which the adjuster is licensed  
8 and in good standing and that is designated by the adjuster as the  
9 adjuster's home state.

10           (6) "Person" means an individual or business entity.

11           SECTION 2. Section 4101.002(a), Insurance Code, is amended  
12 to read as follows:

13           (a) This chapter does not apply to:

14           (1) an attorney who:

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

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

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

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

24           (A) an attorney;

25           (B) an engineer;

26           (C) an estimator;

27           (D) a handwriting expert;

1 (E) a photographer; and

2 (F) a private detective;

3 (4) a licensed insurance producer, attorney-in-fact  
4 of a reciprocal or interinsurance exchange, or managing general  
5 agent of an insurer to whom an insurer grants claim authority [~~an~~  
6 ~~agent or general agent of an authorized insurer who processes an~~  
7 ~~undisputed or uncontested loss for the insurer under a policy~~  
8 ~~issued by the agent or general agent~~];

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

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

13 (7) a person:

14 (A) who is employed principally as:

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

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

17 (B) whose primary responsibility is the  
18 acquisition of easements, leases, permits, or other real property  
19 rights; and

20 (C) who handles only claims arising out of  
21 operations under those easements, leases, permits, or other  
22 contracts or contractual obligations;

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

26 (9) a public insurance adjuster licensed under Chapter  
27 4102;

1           (10) an individual who:

2                   (A) collects claim information from, or  
3 furnishes claim information to, an insured or claimant and enters  
4 data into an automated claims adjudication system; and

5                   (B) is employed by a licensed independent  
6 adjuster or its affiliate under circumstances in which no more than  
7 25 individuals performing duties described by Paragraph (A) are  
8 supervised by a single licensed independent adjuster or a single  
9 licensed agent who is exempt from this chapter under Subdivision  
10 (4);

11                   (11) a person who only settles reinsurance or  
12 subrogation claims; or

13                   (12) an officer or director of an authorized insurer,  
14 surplus lines insurer, or risk retention group, or an  
15 attorney-in-fact of a reciprocal or interinsurance exchange.

16           SECTION 3. Subchapter B, Chapter 4101, Insurance Code, is  
17 amended by adding Section 4101.0521 to read as follows:

18           Sec. 4101.0521. ACCESS TO CRIMINAL HISTORY RECORD  
19 INFORMATION: DEPARTMENT OF INSURANCE. (a) In addition to the  
20 requirements of Section 4101.052(a), an applicant for a license  
21 under this chapter must submit information to the department about  
22 the applicant's administrative and criminal history.

23                   (b) The applicant shall submit to the department a full set  
24 of fingerprints to allow the department to obtain criminal history  
25 record information under Section 411.106, Government Code, and from  
26 the Federal Bureau of Investigation under Section 411.087,  
27 Government Code. The department may contract for the collection and

1 transmission of fingerprints under this section and may order a  
2 reasonable fee for the collection and transmission of fingerprints  
3 to be paid directly to the contractor.

4 (c) The department shall treat fingerprints and any  
5 personal information obtained under this section as confidential  
6 and shall apply security measures consistent with the Federal  
7 Bureau of Investigation's standards for the electronic storage of  
8 fingerprints and identifying information. Any fingerprints and  
9 personal information obtained under this section are not subject to  
10 a subpoena, other than a subpoena issued in a criminal action or  
11 investigation.

12 (d) A nonresident business entity that submits an  
13 application under this section must submit the name, address,  
14 social security number, criminal and administrative history,  
15 background check, biographical statement, and fingerprints for:

16 (1) each of the applicant's executive officers and  
17 directors; and

18 (2) each executive officer and director of an entity  
19 that owns, and each individual that owns, directly or indirectly,  
20 51 percent or more of the outstanding voting securities of the  
21 applicant.

22 (e) A nonresident business entity applicant whose home  
23 state requires compliance with provisions that are substantially  
24 similar to this section is not required to submit the items and  
25 information otherwise required by Subsection (d).

26 SECTION 4. Section 4101.053, Insurance Code, is amended by  
27 amending Subsection (a) and adding Subsections (c) and (d) to read

1 as follows:

2 (a) To qualify for a license under this chapter, an  
3 individual [~~applicant~~] must:

4 (1) comply with this chapter;

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

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

8 (B) resides in this state or a state or country  
9 that permits a resident of this state to act as an adjuster in that  
10 state or country;

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

14 (D) is trustworthy; and

15 (E) has had experience, special education, or  
16 training of sufficient duration and extent regarding the handling  
17 of loss claims under insurance contracts to make the applicant  
18 competent to fulfill the responsibilities of an adjuster; and

19 (3) pass an examination conducted under this  
20 subchapter or present evidence that the applicant has been exempted  
21 under Section 4101.056.

22 (c) To qualify for a license under this chapter, a business  
23 entity must:

24 (1) comply with this chapter; and

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

27 (A) is eligible to designate this state as its

1 home state;

2 (B) is trustworthy;

3 (C) has designated a licensed adjuster  
4 responsible for the business entity's compliance with the insurance  
5 laws of this state;

6 (D) has not committed an act that is a ground for  
7 probation, suspension, revocation, or refusal of an adjuster's  
8 license under Section 4101.201; and

9 (E) has paid the fees prescribed under Section  
10 4101.057.

11 (d) An individual who is not a resident of this state may not  
12 be licensed under this chapter and may not designate this state as  
13 the individual's home state unless the individual has successfully  
14 passed the adjuster examination and complied with the other  
15 applicable portions of this section, except that the individual may  
16 not be required to comply with Subsection (a)(2)(B) or (C).

17 SECTION 5. Section 4101.0521, Insurance Code, as added by  
18 this Act, and Section 4101.053, Insurance Code, as amended by this  
19 Act, apply only to an application for a license filed on or after  
20 the effective date of this Act. A license application filed before  
21 the effective date of this Act is governed by the law applicable to  
22 the application immediately before the effective date of this Act,  
23 and the former law is continued in effect for that purpose.

24 SECTION 6. This Act takes effect September 1, 2011.