

By: Torres

H.B. No. 3154

A BILL TO BE ENTITLED

AN ACT

relating to public insurance adjusters.

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

SECTION 1. Section 4102.051(a), Insurance Code, is amended to read as follows:

(a) A person may not act as a public insurance adjuster in this state or hold himself or herself out to be a public insurance adjuster in this state unless the person holds a license or certificate issued by the commissioner under Section 4102.053, 4102.054, ~~or~~ 4102.069, or 4102.251.

SECTION 2. Section 4102.058, Insurance Code, is amended to read as follows:

Sec. 4102.058. EXEMPTION FROM EXAMINATION REQUIREMENT. The examination requirement imposed by Section 4102.057 does not apply to:

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

(2) an applicant who is licensed as a nonresident public insurance adjuster in a state other than the applicant's state of residence, if the state of licensure requires the passing of a written examination in order to obtain the license and a

1 reciprocal agreement with the appropriate official of the state of  
2 licensure has been entered into by the department; or

3 (3) a person who is issued an emergency license under  
4 Section 4102.251.

5 SECTION 3. The heading to Section 4102.104, Insurance Code,  
6 is amended to read as follows:

7 Sec. 4102.104. COMPENSATION [~~COMMISSIONS~~].

8 SECTION 4. Sections 4102.104(a), (b), and (c), Insurance  
9 Code, are amended to read as follows:

10 (a) Except as provided by Subsection (b), a license holder  
11 may receive compensation [~~a commission~~] for service provided under  
12 this chapter consisting of an hourly fee, a flat rate, a percentage  
13 of the total amount paid by an insurer to resolve a claim after the  
14 date on which an insured is under contract with the license holder,  
15 or another method of compensation. The total compensation  
16 [~~commission~~] received, excluding sales tax, may not exceed 10  
17 percent of the amount of the insurance settlement on the claim. In  
18 this subsection, an insurance settlement is the amount paid by the  
19 insurer while the insured is under contract with the license holder  
20 for public insurance adjuster services. Compensation under a  
21 public insurance adjuster contract may not include an amount paid  
22 by or negotiable instruments issued by the insurer before the date  
23 of the public insurance adjuster contract.

24 (b) A license holder may not receive compensation [~~a~~  
25 ~~commission~~] consisting of a percentage of the total amount paid by  
26 an insurer to resolve a claim on a claim on which the insurer, not  
27 later than 72 hours after the date on which the loss is reported to

1 the insurer, either pays or commits in writing to pay to the insured  
2 the policy limit of the insurance policy in accordance with Section  
3 862.053. The license holder is entitled to reasonable  
4 compensation from the insured for services provided by the license  
5 holder on behalf of the insured, based on the time spent on a claim  
6 that is subject to this subsection and expenses incurred by the  
7 license holder, until the claim is paid or the insured receives a  
8 written commitment to pay from the insurer.

9 (c) Except for the payment of compensation [~~a commission~~] by  
10 the insured, all persons paying any proceeds of a policy of  
11 insurance or making any payment affecting an insured's rights under  
12 a policy of insurance must:

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

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

17 SECTION 5. Chapter 4102, Insurance Code, is amended by  
18 adding Subchapter F to read as follows:

19 SUBCHAPTER F. EMERGENCY LICENSE

20 Sec. 4102.251. EMERGENCY LICENSE. (a) If a catastrophe or  
21 an emergency arises out of a disaster, act of God, riot, civil  
22 commotion, conflagration, or other similar occurrence, the  
23 commissioner may, on application certified by a person who holds a  
24 license under this chapter, issue an emergency license to a  
25 nonresident public insurance adjuster to act as a public insurance  
26 adjuster in a catastrophe area designated by the commissioner under  
27 Subsection (b).

1       (b) After at least 10 days' notice and a hearing, the  
2 commissioner may designate an area as a catastrophe area for  
3 purposes of this subchapter if the commissioner finds an emergency  
4 need for public insurance adjusters due to a catastrophe or an  
5 emergency.

6       (c) The license holder who certifies an application under  
7 Subsection (a) is liable for the loss or claims practices of the  
8 applicant.

9       (d) An emergency license is effective for an initial term of  
10 not more than 90 days as determined by the commissioner. The  
11 commissioner may extend the term of the emergency license for one  
12 period of not more than 90 days after the expiration of the initial  
13 term.

14       (e) The fee for an emergency license is \$40. A person issued  
15 an emergency license shall remit the fee to the department with the  
16 certified application described by Subsection (a).

17       Sec. 4102.252. REQUIREMENT TO REGISTER IN THE DESIGNATED  
18 AREA. (a) A local governmental entity in an area designated as a  
19 catastrophe area under Section 4102.251(b) may require a person  
20 holding an emergency license under Section 4102.251 to register  
21 with the local governmental entity before acting as a public  
22 insurance adjuster in the local governmental entity's boundaries.

23       (b) A local governmental entity that requires registration  
24 under this section may require that the registrant:

25               (1) provide the registrant's name, address, and  
26 telephone number;

27               (2) display or provide a copy of a photo

1 identification of the registrant;

2 (3) provide the emergency license number of the  
3 registrant issued by the department; and

4 (4) provide a copy of proof of financial  
5 responsibility required by Section 4102.105.

6 Sec. 4102.253. REVOCATION OR SUSPENSION OF EMERGENCY  
7 LICENSE. (a) The commissioner may, after notice and hearing,  
8 revoke an emergency license as provided by Section 4102.201.

9 (b) Notwithstanding Subsection (a), the commissioner may  
10 suspend an emergency license without notice or a hearing if the  
11 commissioner finds that:

12 (1) the license holder has failed to maintain  
13 financial responsibility as required by Section 4102.105; or

14 (2) a final judgment against the license holder for  
15 conduct which arose directly or indirectly from the license  
16 holder's public insurance adjuster activity is not paid in full  
17 before the 30th day after the date the judgment becomes final and  
18 unappealable.

19 Sec. 4102.254. NOTIFICATION BY EMERGENCY LICENSE HOLDER.  
20 An emergency license holder is required to notify the department of  
21 a change in employment not later than 15 days after the date of the  
22 change in employment.

23 Sec. 4102.255. APPLICABILITY OF CHAPTER. An emergency  
24 license holder under this subchapter shall comply with all  
25 requirements of this chapter except Sections 4102.053, 4102.054,  
26 4102.057, 4102.062, 4102.063, 4102.064, 4102.065, 4102.066, and  
27 4102.109.

1        Sec. 4102.256. RULES. The commissioner may adopt rules as  
2 necessary to implement this subchapter.

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