

BILL ANALYSIS

Senate Research Center
84R26054 PMO-F

C.S.S.B. 1060
By: Hinojosa
Business & Commerce
5/7/2015
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Dozens of lawsuits are filed against property insurance companies everyday day across Texas alleging underpayment of hail damage claims. Thousands of these lawsuits are presently pending in courts across the state—predominately in Hidalgo, Dallas, Tarrant, and Potter counties— all locations where significant hail storms have occurred over the past few years.

Typically these lawsuits originate with a public adjuster knocking on a property owner's door with promises of a "free roof" because of hail damage. As long as the roof is old, it likely exhibits characteristics that can be alleged to have resulted from hail impact. These public adjusters work to demonstrate to the insurance company that there exists damage resulting from hail impact in an attempt to reasonably resolve the claim.

Other public adjusters, however, simply act as conduits for lawyers. These public adjusters have no intention of adjusting the claim, but instead simply immediately refer their property owner clients to a lawyer. In fact, some public adjusters ask the homeowner to sign a lawyer contract simultaneously with execution of the public adjuster contract. That contract provides the lawyer with a 30 to 40 percent contingency fee payable out of any insurance proceeds obtained.

There is an emerging industry in Texas of public adjusters taking advantage of insurance claims for significant personal financial gain, specifically in hail storm situations, that needs to be stopped. This practice affects homeowners' insurance premiums and coverage, and causes insurance costs to significantly soar for all Texans.

S.B. 1060 prohibits public adjusters from soliciting contracts and selling to attorneys. A public adjuster may not directly or indirectly solicit employment for an attorney in connection with a claim for loss or damage that the license holder negotiates, investigates, or adjusts on behalf of an insured.

In addition, under S.B. 1060 a public adjuster may not accept any form of payment or compensation, other than an amount owed under a contract with the insured, for a claim for loss or damage that the license holder negotiates, investigates, or adjusts on behalf of an insured.
(Author's / Sponsor's Statement of Intent)

C.S.S.B. 1060 amends current law relating to the regulation of public insurance adjusters.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the commissioner of insurance is rescinded in SECTION 2 (Section 4102.066, Insurance Code) of this bill.

Rulemaking authority previously granted to the commissioner of insurance is modified in SECTION 2 (Section 4102.066, Insurance Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 7 (Section 4102.164, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 4102.051(a), Insurance Code, to prohibit a person from acting 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 issued by the commissioner of insurance (commissioner) under Section 4102.053 (Issuance of License to Resident) or 4102.054 (Issuance of License to Nonresident), rather than unless the person holds a license or certificate issued by the commissioner under Section 4102.053, 4102.054, or 4102.069 (Registration Program for Trainees).

SECTION 2. Amends Sections 4102.066(a) and (b), Insurance Code, as follows:

(a) Deletes existing Subdivision (4) requiring the commissioner to collect in advance certain nonrefundable fees including, for a public insurance adjuster trainee certificate under Section 4102.069, a registration fee in an amount to be determined by rule by the commissioner.

(b) Requires that the amount of the fee for the renewal of a license, rather than of a license or a certificate, issued under this chapter be determined by rule by the commissioner.

SECTION 3. Amends Section 4102.103, Insurance Code, by adding Subsection (d), to prohibit a license holder from entering into a contract with an insured and collecting a commission as provided by Section 4102.104 (Commissions) without the intent to actually perform the services customarily provided by a licensed public insurance adjuster for the insured.

SECTION 4. Amends Section 4102.104(d), Insurance Code, to prohibit a public insurance adjuster from accepting any payment that violates the provisions of this section, rather than violates Subsection (c) (requiring all persons paying any proceeds of a policy of insurance or making any payment affecting an insured's rights under a policy of insurance, except for the payment of a commission by the insured, to include the insured as a payee on the payment draft or check, and require the written signature and endorsement of the insured on the payment draft or check).

SECTION 5. Amends Section 4102.158, Insurance Code, by amending Subsection (a) and adding Subsections (d), (e), and (f), as follows:

(a) Prohibits a license holder from engaging in any other activities that may reasonably be construed as presenting a conflict of interest, including soliciting or accepting any remuneration from, having a financial interest in, or deriving any direct or indirect financial benefit from, any salvage firm, repair firm, construction firm, or other firm that obtains business in connection with any claim the license holder has a contract or agreement to adjust.

(d) Prohibits a license holder from directly or indirectly soliciting, as described by Chapter 38 (Obstructing Governmental Operation), Penal Code, employment for an attorney or enter into a contract with an insured for the primary purpose of referring an insured to an attorney and without the intent to actually perform the services customarily provided by a licensed public insurance adjuster. Prohibits this section from being construed to prohibit a license holder from recommending a particular attorney to an insured.

(e) Prohibits a license holder from acting on behalf of an attorney in having an insured sign an attorney representation agreement.

(f) Requires a license holder to become familiar with and at all times act in conformance with the criminal barratry statute set forth in Section 38.12 (Barratry and Solicitation of Professional Employment), Penal Code.

SECTION 6. Amends Section 4102.160, Insurance Code, as follows:

Sec. 4102.160. CERTAIN PAYMENTS PROHIBITED. Prohibits a license holder from advancing money to any potential client or insured, or paying, allowing, or giving, or offering to pay, allow, or give, directly or indirectly, to a person who is not a licensed public insurance adjuster a fee, commission, or other valuable consideration for the referral of an insured to the public insurance adjuster for purposes of, rather than based on, the insured entering into a contract with that public insurance adjuster or for any other purpose. Deletes existing text prohibiting a license holder from otherwise offering to pay a fee, commission, or other valuable consideration exceeding \$100 to a person not licensed as a public insurance adjuster for referring an insured to the license holder.

SECTION 7. Amends Subchapter D, Chapter 4102, Insurance Code, by adding Section 4102.164, as follows:

Sec. 4102.164. ACCEPTANCE OF REFERRAL PAYMENTS PROHIBITED. (a) Prohibits a licensed public insurance adjuster from accepting a fee, commission, or other valuable consideration of any nature, regardless of form or amount, in exchange for the referral by a licensed public insurance adjuster of an insured to any third-party individual or firm, including an attorney, appraiser, umpire, construction company, contractor, or salvage company.

(b) Requires the commissioner to adopt rules necessary to implement and enforce this section.

SECTION 8. Repealer: Section 4102.069 (Registration Program for Trainees), Insurance Code.

SECTION 9. Provides that the repeal by this Act of Section 4102.069, Insurance Code, does not affect the authority of a person to act under a temporary certificate issued by the Texas Department of Insurance under that section before the effective date of this Act.

SECTION 10. Provides that Sections 4102.103(d) and 4102.158(d), Insurance Code, as added by this Act, apply only to a contract entered into or solicitation made on or after the effective date of this Act.

SECTION 11. (a) Provides that except as provided by this section, Section 4102.104, Insurance Code, as amended by this Act, applies only to payment accepted on or after the effective date of this Act.

(b) Makes application of this Act prospective.

SECTION 12. Provides that Section 4102.160, Insurance Code, as amended by this Act, and Section 4102.164, Insurance Code, as added by this Act, apply only to a referral made on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 13. Makes application of this Act prospective.

SECTION 14. Effective date: September 1, 2015.