

**SUBJECT:** Requiring licensing of public insurance adjusters

**COMMITTEE:** Insurance — committee substitute recommended

**VOTE:** 7 ayes — Smithee, Seaman, Gallego, B. Keffer, Taylor, Thompson, Van Arsdale

0 nays

2 absent — Eiland, Bonnen

**WITNESSES:** For — Jim Beneke; Bill Stinson, Texas Association of Realtors; Dan Lambe, Texas Watch

Against — Leo Wadley

On — Jay Thompson, Association of Fire and Casualty Companies in Texas, Texas Farm Bureau Insurance Cos.

**BACKGROUND:** Insurance Code, art. 21.07-4 sets forth guidelines for the licensing of insurance adjusters. An insurance adjuster acts on behalf of or is employed by an insurance company to settle claims. An insurer uses the claims adjustment process to evaluate and settle a claim. The process includes determining whether and to what extent the loss is covered by the policy, determining the cause of the loss, and valuing the loss.

Unlike licensed insurance adjusters, public insurance adjusters, who are not attorneys, represent the insured in loss adjustments, charging a fee for settling claims with insurers.

Business and Commerce Code, sec. 17.46(b) sets forth specific business practices that are considered false, misleading, or deceptive in Texas.

Penal Code, sec. 38.123 sets forth prohibitions against the unauthorized practice of law in Texas.

DIGEST:

CSHB 392 would require that public insurance adjusters who do business in Texas be licensed by the commissioner of insurance. Practicing without a license would be a misdemeanor offense (up to six months in jail and/or a maximum fine of \$1,000). Administrative penalties would apply to those who engaged in unfair competition or unfair trade practices.

CSHB 392 would define a public insurance adjuster (PIA) as someone who acted on behalf of or aided in any manner an insurance policy holder in negotiating to settle a claim for loss or damage to real or personal property, and who received payment for this service. Sales personnel would be included in the definition. A PIA could not represent a policy holder in a bodily injury claim.

**Authority.** The PIA licensing requirement would not limit or diminish a PIA's adjusting authority to any less than the authority of an insurance company adjuster. PIAs could not render legal advice or use their licenses to practice law in the state of Texas. A PIA also could not use a badge in connection with official activities.

**Contracts and records.** A PIA would have to provide a written contract to a policy holder clearly explaining in large print that the adjuster represented only the insured, and would have to allow the consumer to cancel the contract up to 72 hours after signing. A contract could be voided with no damages to the policy holder if a PIA were found to be practicing without a license. Full, accurate, and confidential records would have to be kept for at least five years after the end of each transaction, including itemized statements of all recoveries and disbursements.

**Contingent fees and claims proceeds.** A licensed PIA could not collect a contingent fee of more than 10 percent of the insurance settlement on the claim and could not collect any fee on a claim that was declared a total loss by the insurance company within three days of being reported. However, a PIA could collect reasonable compensation for expenses and services rendered in such a case. All funds received as claim proceeds would have to be held by the PIA in a fiduciary capacity, and diversion of funds would be prosecuted as theft.

**Ethics and conflicts of interest.** A licensed PIA could not represent both the insured and the insurance company against which a claim was made. A PIA could not act as a contractor or remediator on the same claim the PIA was adjusting, nor could a PIA have any interest in a contracting or remediation firm that benefitted from the adjusted claim. A PIA could not offer to pay anyone (except another licensed PIA) a referral fee or commission exceeding \$100. The commissioner would adopt an ethics code by September 1, 2004, under which all licensed PIAs would have to operate.

**Solicitation.** A licensed PIA could solicit business only between 9 a.m. and 9 p.m. on weekdays and Saturdays and between noon and 9 p.m. on Sundays. A PIA could not solicit business during a natural disaster, nor make any misrepresentation, nor offer to advance money to a client to solicit business. Neither employees nor agents of a license holder could solicit business while representing themselves as a licensed PIA without holding their own license.

**Eligibility.** To obtain a license, a PIA would have to be a Texas resident at least 18 years old, of trustworthy moral character, with no felony convictions, and with enough training and experience in property values and losses, insurance contracts, and earning capabilities in order not to do injury to the public. Resident license holders would have to maintain a publicly accessible place of business where process could be served.

**Security.** A PIA would have to be fingerprinted and bonded with the commissioner in the amount of \$50,000. Instead of filing a bond, a PIA could take out a professional liability policy with \$50,000 of coverage, or deposit \$50,000 in cash or securities with the comptroller. A PIA also could be covered under an employer's professional liability policy if the policy had a minimum liability limit of \$250,000 for all employees. A PIA's license could be suspended for not maintaining a surety bond.

**Examinations.** The commissioner would appoint a five-member committee to develop a written licensing exam within 60 days of the effective date of the bill and also would approve the persons who administered the exam. The written exam would have to be developed no later than January 1, 2004, and could be supplemented by an oral exam. The exam would test the applicant's knowledge of insurance theory, contracts, claims ethics, unfair competitive and business practices, and the duties of a PIA. A temporary license could be

issued to a PIA who satisfied all other requirements pending development of the exam.

**Licensing and exam fees.** The commissioner would collect nonrefundable licensing and exam-related fees from applicants in advance. All fees would be deposited in the state treasury in the Texas Department of Insurance (TDI) operating account, where they could be used to pay the costs of enforcement and investigation, including salaries and expenses.

**Nonresidents.** Nonresidents wishing to obtain a Texas PIA license would have to meet the same requirements as residents in terms of age, background, character, training, fingerprinting, bonding, and maintaining a business address where process could be served. Exam requirements could be waived for nonresident PIAs who proved that they already held a valid license in another state where a comparable exam was administered and a reciprocal agreement existed; however, nonresidents would have to submit annually to TDI an affidavit certifying knowledge of applicable state laws.

**Training certificates.** A PIA trainee, after registering with TDI, being fingerprinted, and filing a surety bond, could obtain up to two consecutive 180-day temporary training certificates. A trainee only could practice under the direction of a license holder.

**Renewals and continuing education.** A licensed PIA would have to renew every two years and submit the application 30 days before the old license expired. A PIA whose license had lapsed for less than one year could renew or reapply under certain conditions. The PIA would have to pay a penalty fee, but would not have to retake the exam. A PIA whose license had lapsed for more than one year could not renew and would have to comply with all requirements for the original license. To keep a license current, a PIA would have to take 15 hours of continuing education courses each year.

**Denial, suspension, or revocation.** The commissioner could deny, suspend, or revoke a license for any violation under the bill, failure to pass the exam, willful misrepresentation or fraud, misappropriation of money, demonstrated incompetence, or felony conviction. A person would be entitled to notice, hearing, and the right to appeal. Suspension could not exceed 12 months. Five years after denial or revocation of a license, a person could retake the exam

and reapply. An administrative penalty of \$1,000 per violation could be imposed in lieu of a suspension or revocation, and the commissioner could order the PIA to cease and desist from any prohibited conduct under the bill.

**Exemptions.** Licensed attorneys and licensed property and casualty agents would be exempt from the licensing requirement under this bill. Licensed PIAs would be exempt from certain requirements set forth in the Insurance Code governing licensed agents.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

CSHB 392 would help consumers protect their biggest and most important asset — their home — when filing property insurance claims. Public insurance adjusters provide a valuable service to consumers who need a qualified person to manage the complicated insurance claims process on their behalf. By providing consumers with assurance that they were dealing with licensed, competent public adjusters, by creating consistency and standards, by setting forth ethics policies, and by giving consumers a place to complain about unscrupulous practitioners, the bill would make public insurance adjusters more accountable both to their clients and to the state.

CSHB 392 would eliminate conflicts of interest by preventing remediators or building contractors from acting as public adjusters. Consumers have been subjected to a variety of scams by unlicensed adjusters who offer to pay their living expenses or adjust a claim for free so long as consumers will agree to use the adjuster's contracting firm to make the repairs. Legitimate public adjusters are not, and should not represent themselves to be, contractors, mold remediators, roofers, or plumbers. This bill would prevent licensed public adjusters from being involved in repairs or construction of any kind in connection with their clients' claims.

The bill would prevent dishonest people from exploiting public fears or benefitting from the hysteria that surrounds catastrophic events such as floods, hurricanes, tornadoes, or other events such as the current "mold crisis." These situations merely open the door for unprincipled dealers to abuse the public trust, creating opportunities for individuals or companies to

present themselves as public adjusters as a cover for whatever service they truly are offering — construction, roofing, mold remediation, foundation repairs, etc. This bill would put an end to this.

CSHB 392 would define clearly a public insurance adjuster's role in handling insurance claims, making it plain that public adjusters are not authorized to practice law. The bill would not give public insurance adjusters the ability to mediate disputes with insurance companies. Throughout the bill, it clearly states that public insurance adjusters could not use their license to practice law, nor could they render legal advice, nor could they represent a client in a claim for bodily injury loss. The author plans to offer several amendments to address more specific concerns about the bill's language in this regard.

This bill would return honor to an honorable profession. Disreputable players have given public adjusters a bad name in recent years, and honest public adjusters should have nothing to fear from state licensing. The profession of public adjusting was established more than 100 years ago, and public adjusters now are licensed in the vast majority of states. Only in Texas, Alabama, Kansas, Louisiana, Mississippi, and Wyoming do they remain unlicensed or unregulated.

CSHB 392 would yield an estimated net gain of \$62,500 per year over the next five years in collection of licensing fees. This should provide the commissioner ample funding to enforce the code and investigate alleged violations.

**OPPONENTS  
SAY:**

CSHB 392 would not go far enough in prohibiting public insurance adjusters from the unauthorized practice of law in Texas. The bill's definition of a public insurance adjuster would appear to give license holders the power to negotiate disputes with insurance companies. Public insurance adjusters should be limited to assessing and valuing property damage, and if a dispute arises, a lawyer should be engaged. While the bill would prohibit licensed public adjusters from representing clients in bodily injury claims, it also should state explicitly that adjusters could not represent clients in any third-party claim. Further, certain language in the bill, such as the limit on "contingent fees," treads too close for comfort to accepted legal practices.

This bill would have unintended consequences that could be damaging to consumers, by legitimizing a profession that preys on unsuspecting citizens during stressful events. Insurance company adjusters already are trained and licensed to handle claims for property damage or loss. Public adjusters merely go door to door seeking commission fees for claims that would have been paid by the insurance company anyway.

CSHB 392 would eliminate the ability of contractors to provide valuable services that they currently offer for free. Legitimate, honest contractors and roofers spend hours of uncompensated time providing estimates to repair damaged property. It is much more convenient for the consumer to assign the claims process to a knowledgeable contractor or roofer in a one-stop process, rather than assigning a claim to an adjuster who wants to take a percentage of the claim. It already is against the law for contractors to pad estimates, rebate deductibles, or give discounts. A bill that strengthened these standards would go further to get rid of bad actors and would do a greater service to consumers than a bill to disallow honest contractors from doing quality work.

This bill would limit consumer choices. There are relatively few public insurance adjusters currently practicing in the state of Texas. In the event of a catastrophic event such as a tornado or hurricane, there simply would not be enough licensed public adjusters to handle the volume of claims. Contractors already are handling many of these claims for consumers, providing them with fast, accurate, convenient service. Prohibiting contractors from helping consumers with their insurance claims would place consumers at the mercy of insurance company adjusters who have only the interests of the insurance company at heart.

CSHB 392 would not provide for a disciplinary board to oversee license holder conduct. Instead, it would give full responsibility for oversight to the commissioner with insufficient funds for implementation.

**NOTES:**

The author plans to offer an amendment making a number of changes, including, but not limited to:

- eliminating any reference to “contingent fees” and changing it to “commissions;”
- elaborating on the prohibition against rendering legal advice;
- adding a prohibition against a public insurance adjuster representing a

- client in a third-party claim;
- prohibiting a public insurance adjuster from offering advance money to a potential client for any reason; and
- prohibiting a public insurance adjuster from paying a referral fee, commission, or other valuable consideration in any amount.

The substitute made the following changes to the original:

- included sales personnel in the definition of public adjuster;
- added a prohibition against a public adjuster engaging in the unauthorized practice of law;
- raised the bond amount from \$10,000 to \$50,000;
- allowed for an employer to provide liability coverage for a license holder under a company policy with a limit of \$250,000 for all employees;
- allowed license holders to handle only property insurance claims covered under real and personal property values;
- required the exam to include questions about basic insurance theory, elements of contracts, ethics, and the insurance code;
- deleted a grandfather clause that would have exempted anyone with proof of public adjuster status as of September 1, 2002, or a public adjuster from another state with a reciprocal agreement, or a public adjuster who had completed a course approved by the commissioner;
- allowed nonresidents to apply with a letter of good standing from their resident state;
- required nonresidents to take the exam unless they had passed a test in their resident state and that state had a reciprocal agreement with Texas, or had passed a nonresident test in another state that had a reciprocal agreement with Texas;
- required the commissioner to adopt a code of ethics;
- required that a license be renewed every two years;
- required 15 hours of continuing education;
- limited contingent fees to 10 percent and prohibited the fee on a claim where the company paid or committed to pay the full policy limits within 72 hours of loss report;
- added required contract language including a statement in large print specifying that the license holder represents the insured only;



- limited solicitation to certain hours of the day and prohibited solicitation during a natural disaster;
- prohibited the rendering of legal advice or solicitation of claims for bodily injury;
- prohibited the participation of an adjuster in the reconstruction, repair or remediation of damaged property;
- prohibited the adjuster from accepting fees from, or having a financial interest in, a repair firm; and
- prohibited the payment of a referral fee of more than \$100, unless the recipient was licensed under the bill.

According to the Legislative Budget Board, CSHB 392 would have no impact on general revenue and would provide a net gain of \$62,500 per year over the next five years in collection of licensing fees.

The companion bill, SB 128 by Fraser, was laid on the table subject to call by the Senate Business and Commerce Committee on March 18.

A related bill, HB 329 by Naishtat, which would require the regulation of mold assessors and remediators, was reported favorably as substituted by the Licensing and Administrative Procedures Committee on March 13.