

INSURANCE CODE

TITLE 13. REGULATION OF PROFESSIONALS

SUBTITLE C. ADJUSTERS

CHAPTER 4102. PUBLIC INSURANCE ADJUSTERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4102.001. DEFINITIONS. In this chapter:

(1) "License holder" means a person licensed under this chapter as a public insurance adjuster.

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

(3) "Public insurance adjuster" means:

(A) a person who, for direct, indirect, or any other compensation:

(i) acts on behalf of an insured in negotiating for or effecting the settlement of a claim or claims for loss or damage under any policy of insurance covering real or personal property; or

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

(B) a person who advertises, solicits business, or holds himself or herself out to the public as an adjuster of claims for loss or damage under any policy of insurance covering real or personal property.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.002. GENERAL EXEMPTIONS. This chapter does not apply to:

- (1) an officer or employee of the federal or state government or of a political subdivision of the state government while the officer or employee is engaged in the performance of official duties;
- (2) an attorney engaged in the performance of the attorney's professional duties;
- (3) insurers admitted to do business in the state and agents licensed by this state, engaged in the performance of their duties in connection with insurance transactions;
- (4) the legal owner of personal property that has been sold under a conditional sales agreement or a mortgagee under the terms of a chattel mortgage;
- (5) a salaried office employee who performs exclusively clerical or administrative duties attendant to the disposition of the business regulated by this chapter;
- (6) a photographer, estimator, appraiser, engineer, or arbitrator employed by a public insurance adjuster exclusively for the purpose of furnishing technical assistance to the licensed public insurance adjuster;
- (7) a private investigator licensed under Chapter 1702, Occupations Code, while acting within the scope of that license; or
- (8) a full-time salaried employee of a property owner or a property management company retained by a property owner who:
 - (A) does not hold the employee out as:
 - (i) a public insurance adjuster; or
 - (ii) a building, roofing, or other restoration contractor;
 - (B) has not been hired to handle a specific claim resulting from a fire or casualty loss; and
 - (C) acts at the sole discretion of the property owner or management company regarding a claim related to the owner's property.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.003. CERTAIN CONSTRUCTION REGARDING PRACTICE OF LAW PROHIBITED. This chapter may not be construed as entitling a person who is not licensed by the Supreme Court of Texas to practice law in this state.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.004. RULES. The commissioner may adopt reasonable and necessary rules to implement this chapter, including rules regarding:

(1) the qualifications of license holders, in addition to those prescribed by this chapter, that are necessary to promote and protect the public interest;

(2) the regulation of the conduct of license holders;

(3) the prescription of fees required by Section 4102.066; and

(4) the regulation of advertisements under Section 4102.113 and the definition of "advertisement" as the term is used in that section.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.005. CODE OF ETHICS. The commissioner, with guidance from the public insurance adjusters examination advisory committee, by rule shall adopt:

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

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

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

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.006. NOTICE TO LAST ADDRESS. Notice by registered mail, return receipt requested, sent to the last known address of an applicant for a license, a license holder, or another person to whom notice is required to be sent under this chapter, as reflected by the records of the department, constitutes sufficient notice under this chapter.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

SUBCHAPTER B. LICENSE REQUIREMENTS

Sec. 4102.051. LICENSE REQUIRED; EXEMPTION. (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.

(b) A license is not required for:

(1) an attorney licensed to practice law in this state who has complied with Section 4102.053(a)(6); or

(2) a person licensed as a general property and casualty agent or personal lines property and casualty agent under Chapter 4051 while acting for an insured concerning a loss under a policy issued by that agent.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. [548](#), Sec. 2.31, eff. September 1, 2007.

Sec. 4102.052. APPLICATION. (a) An application for a license under this chapter must be on a form prescribed by the commissioner.

(b) The completed application must be notarized and be accompanied by a nonrefundable license application fee, as provided by Section 4102.066, for each application submitted.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.053. ISSUANCE OF LICENSE TO RESIDENT. (a) The commissioner shall issue a public insurance adjuster license to an applicant on determining that the application meets the requirements of this chapter, the license application fee has been paid, and the applicant is an individual who:

- (1) is at least 18 years of age;
- (2) is a citizen of the United States or has complied with all federal laws pertaining to employment or to the transaction of business in the United States;
- (3) is a resident of this state;
- (4) is trustworthy and of a moral character that reasonably ensures that the applicant will conduct the business of a public insurance adjuster fairly and in good faith without detriment to the public;
- (5) has not been convicted of a felony in the 10 years preceding filing an application under this chapter or, if convicted of a felony in the 10 years preceding filing an application under this chapter, has received a full pardon from that conviction and is otherwise relieved from any disabilities connected with that conviction;
- (6) has sufficient experience or training relating to the assessment of:
 - (A) real and personal property values; and
 - (B) physical loss of or damage to real or personal property that may be the subject of insurance and claims under insurance;
- (7) is sufficiently informed as to the terms and effects of the types of insurance contracts that provide coverage on real and personal property;
- (8) possesses knowledge and experience adequate to enable the applicant to engage in the business of a public insurance adjuster fairly and without injury to the public or

any member of the public with whom the applicant may have business as a public insurance adjuster;

(9) has successfully passed the license examination prescribed under Section 4102.057 or is exempt from the examination requirement under this chapter;

(10) has complied with the financial responsibility requirements imposed under Section 4102.105; and

(11) has complied with any other requirements under applicable state law, including provision of a complete set of fingerprints on request, as provided by Section 4001.103.

(b) The commissioner may issue a resident public insurance adjuster license to an applicant who has been convicted of a felony 11 or more years before filing an application under this chapter if the commissioner determines that the applicant is qualified to act as a public insurance adjuster and that the circumstances surrounding the applicant's conviction do not warrant the denial of a license issued under this chapter.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.054. ISSUANCE OF LICENSE TO NONRESIDENT. (a) The commissioner may issue a nonresident license to an applicant for a public insurance adjuster license who is not a permanent resident of this state on determining that the application meets the requirements of this chapter, the nonresident license application fee has been paid, and the applicant is an individual who:

(1) is at least 18 years of age;

(2) except as provided by Section 4102.058, has passed, to the satisfaction of the commissioner, an examination approved by the commissioner and of sufficient scope as prescribed by Section 4102.057;

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

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

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

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

(A) real and personal property values; and

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

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

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

(9) if currently licensed as a resident public insurance adjuster in the applicant's state of residence, provides with the application a certificate or letter of authorization from the licensing authority of the applicant's state of residence that:

(A) states that the applicant holds a current or comparable license to act as a public insurance adjuster; and

(B) meets the requirements of Subsection (b);

(10) if the applicant's state of residence does not require licensure as a resident public insurance adjuster and the applicant has been licensed as an adjuster, agent, broker, or other insurance representative in the applicant's state of residence or any other state within the past three years, provides with the application a certificate or letter of authorization from the licensing authority that:

(A) states that the applicant holds or has held a license to act as an adjuster, agent, broker, or other insurance representative; and

(B) meets the requirements of Subsection (c);

(11) files proof of financial responsibility in accordance with Section 4102.105; and

(12) complies with any other requirements under applicable state law, including provision of a complete set of fingerprints on request, as provided by Section 4001.103.

(b) A certificate or letter required by Subsection (a)(9) must:

(1) be signed by the appropriate licensing official of the applicant's state of residence; and

(2) disclose whether the applicant has ever had any license or eligibility to hold any license declined, denied, suspended, or revoked and whether the applicant has ever been placed on probation and whether an administrative fine or penalty has been levied against the applicant and, if so, the reason for the action.

(c) A certificate or letter required by Subsection (a)(10) must:

(1) be signed by the appropriate licensing official; and

(2) disclose whether the applicant has ever had any license or eligibility to hold any license declined, denied, suspended, or revoked and whether the applicant has ever been placed on probation and whether an administrative fine or penalty has been levied against the applicant and, if so, the reason for the action.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.055. ISSUANCE OF LICENSE TO BUSINESS ENTITY ORGANIZED IN THIS STATE. (a) The commissioner shall adopt rules necessary to issue a public insurance adjuster license to a business entity organized under the laws of this state.

(b) Rules adopted by the commissioner under Subsection (a) must:

(1) be analogous to the provisions of Chapter 4001 that relate to licensure of corporations and partnerships; and

(2) contain qualifications for the issuance of a public insurance adjuster license analogous to the qualifications described by Section 4102.053.

(c) The commissioner may not issue a public insurance adjuster license to a business entity described by Subsection (a) unless at least one officer, active partner, or other managing individual of the business entity, and each individual performing acts of a public insurance adjuster on behalf of the business entity in this state, are individually licensed by the department under Section 4102.053 separately from the business entity.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.056. ISSUANCE OF LICENSE TO BUSINESS ENTITY NOT ORGANIZED IN THIS STATE. (a) The commissioner shall adopt rules necessary to issue a public insurance adjuster license to a business entity organized under the laws of another state or the United States.

(b) Rules adopted by the commissioner under Subsection (a) must:

(1) be analogous to the provisions of Chapter 4001 that relate to issuance of licenses to business entities; and

(2) contain:

(A) qualifications for the issuance of a public insurance adjuster license analogous to the qualifications described by Section 4102.054; and

(B) requirements for the performance of the duties and powers of a public insurance adjuster analogous to the requirements described by Section 4102.054.

(c) The department may not issue a public insurance adjuster license to a business entity described by Subsection (a) unless at least one officer, active partner, or other managing individual of the business entity, and each individual performing acts of a public insurance adjuster on behalf of the business entity in this state, are individually licensed by the department under Section 4102.054 separately from the business entity.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.057. EXAMINATION REQUIRED. (a) Except as otherwise provided by this chapter, each applicant for a license as a public insurance adjuster must, before the issuance of the license, take and pass an examination to the satisfaction of the commissioner.

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

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

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

(3) knowledge of:

(A) Chapter 541;

- (B) Subchapters A and B, Chapter 542;
- (C) Chapter 547;
- (D) the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code);
- (E) analogous laws as specified by the commissioner;
- (F) statutory provisions related to the unauthorized practice of law contained in Subchapter G, Chapter 81, Government Code; and
- (G) the duties and responsibilities of public insurance adjusters under the law.

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

(d) An examination is not required for the renewal of a license issued under this chapter.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

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 reciprocal agreement with the appropriate official of the state of licensure has been entered into by the department.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.059. EXAMINATION ADVISORY COMMITTEE. (a) The commissioner may appoint a public insurance adjusters examination advisory committee composed of at least five members to assist in developing the examination required by Section 4102.057. At least three members must be eligible for licensure as public insurance adjusters. At least one member must be a person from the insurance industry who is not a public insurance adjuster, and at least one member must represent consumer interests.

(b) A member of the advisory committee is not entitled to compensation for service on the committee. A member is entitled to reimbursement for reasonable and necessary expenses incurred in performing services for the committee, subject to any limitation in the General Appropriations Act.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.060. EXAMINATION FORM AND TIME. (a) The answers of an examinee to an examination required under this chapter shall be made by the examinee in writing. A written examination may be supplemented by oral examination.

(b) The examination shall be given at times and places within the state as the commissioner considers necessary to reasonably serve the convenience of both the commissioner and examinees.

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

(d) The scheduling and administration of examinations required under Section 4102.057 shall be effected by persons approved by the commissioner.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.061. LICENSE FORM. The commissioner shall prescribe the form of the licenses issued under this chapter. Each license must contain:

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

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

(3) if applicable, the name of the firm with which the public insurance adjuster is employed at the time the license is issued.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.062. EXPIRATION. A license issued under this chapter expires on the second anniversary of the date of issuance unless suspended or revoked by the commissioner.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.063. NOTICE OF EXPIRATION. At least 30 days before the expiration of a license, the department shall send written notice of the impending license expiration to the license holder at the license holder's last known mailing address according to the records of the department.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.064. RENEWAL OF UNEXPIRED LICENSE. (a) A license holder may renew a license that has not expired and has not been suspended or revoked by filing with the department a properly completed renewal application, in the form prescribed by the commissioner, that demonstrates continued compliance with the license requirements imposed under this chapter or adopted by rule by the commissioner. The completed renewal application must be accompanied by:

(1) a renewal fee in the amount determined by the commissioner under Section 4102.066(b); and

(2) evidence of compliance with the continuing education requirements imposed under Section 4102.109.

(b) A license holder must submit the completed renewal application, evidence of compliance with the continuing education requirements, and the renewal fee to the commissioner not later than the 30th day before the second anniversary date of the license.

(c) On the filing of a completed renewal application, renewal fee, and, if applicable, evidence of compliance with the continuing education requirements, the original license continues in force until:

- (1) the department issues the renewal license; or
- (2) the commissioner issues an order revoking the license.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.065. RENEWAL OF EXPIRED LICENSE. (a) A person whose license has been expired for 90 days or less may renew the license by:

- (1) submitting to the department:
 - (A) a completed renewal application in the form prescribed by the commissioner; and
 - (B) evidence of compliance with the continuing education requirements; and
- (2) paying to the department the required renewal fee and an additional fee that is equal to one-half of the renewal fee for the license.

(b) A person whose license has been expired for more than 90 days but less than one year may not renew the license but is entitled to a new license without taking the applicable examination if the person submits to the department:

- (1) a new application;
- (2) evidence of compliance with the continuing education requirements;
- (3) the license fee; and
- (4) an additional fee equal to one-half of the license fee.

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

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

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.066. FEES. (a) The commissioner shall collect in advance the following nonrefundable fees:

(1) for a public insurance adjuster license, an application fee in an amount to be determined by rule by the commissioner;

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

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

(4) 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) The amount of the fee for the renewal of a license or a certificate issued under this chapter shall be determined by rule by the commissioner.

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

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.067. USE OF FEES. (a) When collected, the fees authorized by this chapter shall be deposited with the comptroller to the credit of the Texas Department of Insurance operating account.

(b) The department may use any portion of the fees collected to:

(1) enforce this chapter;

(2) employ persons as the department considers necessary to investigate and make reports regarding alleged violations of this code and misconduct on the part of public insurance adjusters; and

(3) pay the salaries and expenses of persons and office employees and other expenses necessary to enforce this chapter.

(c) A person employed by the department under this section may examine under oath any person for the purpose of gathering information and evidence and may have the information and evidence reduced to writing.

(d) All expenses incurred under this section shall be paid from the fees collected under this chapter.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.068. LICENSE NOT ASSIGNABLE. A license issued under this chapter is not assignable.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.069. REGISTRATION PROGRAM FOR TRAINEES. (a) A public insurance adjuster trainee must register with the department for a temporary certificate under this section. An applicant for a temporary certificate as a trainee must apply to the commissioner on a form prescribed by the commissioner. The form must be accompanied by a nonrefundable registration fee as prescribed by Section 4102.066(a)(4).

(b) A temporary certificate may be issued under this section only for educational and training purposes. The holder of a temporary certificate may practice only under the direction and sponsorship of a license holder of this state.

(c) The sponsor of a public insurance adjuster trainee shall attest, on a form prescribed by the commissioner, that the trainee is under the supervision and control of the sponsor and that the sponsor has met the financial responsibility requirements of Section 4102.105.

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

(e) Each individual who holds a temporary certificate under this section must comply with the financial responsibility requirements imposed under Section 4102.105.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 4102.101. GENERAL AUTHORITY. (a) A license issued under this chapter authorizes the adjusting of claims on behalf of insureds for fire and allied coverages, burglary, flood, and all other property claims, both real and personal, including loss of income, but only when the client is an insured under the insurance policy.

(b) This chapter does not limit or diminish the authority of a license holder to investigate or adjust a loss to less than the authority for that purpose that may be exercised by an adjuster licensed under Chapter 4101.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.102. COMPLIANCE WITH INSURANCE CONTRACT. A license holder shall prepare each claim for an insured represented by the license holder in accordance with the terms and conditions of the contract of insurance under which recovery is sought.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.103. CONTRACT FOR SERVICES REQUIRED. (a) A license holder may not, directly or indirectly, act within this state as a public insurance adjuster without having first entered into a contract, in writing, on a form approved by the commissioner, executed in duplicate by the license holder and the insured or the insured's duly authorized representative. A license holder may not use any form of contract that is not approved by the commissioner.

(b) The contract must contain a provision allowing the client to rescind the contract by written notice to the license holder within 72 hours of signature, and must include a prominently

displayed notice in 12-point boldface type that states "WE REPRESENT THE INSURED ONLY." The commissioner by rule may require additional prominently displayed notice requirements in the contract as the commissioner considers necessary.

(c) One copy of the contract shall be kept on file in this state by the license holder and must be available at all times for inspection, without notice, by the commissioner or the commissioner's duly authorized representative.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.104. COMMISSIONS. (a) Except as provided by Subsection (b), a license holder may receive a commission for service provided under this chapter consisting of an hourly fee, a flat rate, a percentage of the total amount paid by an insurer to resolve a claim, or another method of compensation. The total commission received may not exceed 10 percent of the amount of the insurance settlement on the claim.

(b) A license holder may not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim on a claim on which the insurer, not later than 72 hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy in accordance with Section 862.053. The license holder is entitled to reasonable compensation from the insured for services provided by the license holder on behalf of the insured, based on the time spent on a claim that is subject to this subsection and expenses incurred by the license holder, until the claim is paid or the insured receives a written commitment to pay from the insurer.

(c) Except for the payment of a commission by the insured, all persons paying any proceeds of a policy of insurance or making any payment affecting an insured's rights under a policy of insurance must:

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

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

(d) A public insurance adjuster may not accept any payment that violates Subsection (c).

(e) Notwithstanding any authorization the insured may have given to a public insurance adjuster, a public insurance adjuster may not sign and endorse any payment draft or check on behalf of an insured.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.105. FINANCIAL RESPONSIBILITY. (a) As a continuing condition of licensure, a public insurance adjuster must file proof of financial responsibility with respect to transactions with insureds under this chapter in an amount determined by the commissioner by rule. The financial responsibility must include the ability to pay sums the public insurance adjuster is obligated to pay under any judgment against the public insurance adjuster by an insured, based on an error, omission, fraud, negligent act, or unfair practice of the public insurance adjuster or any person for whose acts the public insurance adjuster is legally liable in the transaction of the public insurance adjuster's business under this code.

(b) In determining the amount of the financial responsibility requirement, the commissioner shall consider the nature of the obligation, other financial security requirements under this code, and financial security requirements adopted for public insurance adjusters in other states. In determining the types of financial responsibility required, the commissioner may consider a surety bond or a professional liability policy or similar policy or contract of professional liability coverage acceptable to the commissioner.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.106. PLACE OF BUSINESS. (a) Each license holder who is a resident of this state or a business entity organized under the laws of this state shall:

(1) maintain a place of business in this state that is accessible to the general public; and

(2) maintain in the place of business the records required by this chapter.

(b) The address of the place of business must appear on the face of the license.

(c) The license holder shall promptly notify the commissioner of any change in the address of the license holder's place of business.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.107. AGENT FOR SERVICE OF PROCESS. (a) Each nonresident license holder shall maintain an agent in this state for service of process.

(b) The name and address of the nonresident license holder's out-of-state business address and the name and address of the agent must appear on the face of the license.

(c) The nonresident license holder shall promptly notify the department of any change in the address of the license holder's place of business or in the agent for service of process.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.108. POSTING OF LICENSE. A license issued under this chapter must at all times be posted in a conspicuous place in the principal place of business of the license holder.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.109. CONTINUING EDUCATION. (a) Each license holder must annually complete at least 15 hours of continuing education courses. The commissioner by rule shall prescribe the requirements for continuing education courses under this section.

(b) Notwithstanding Subsection (a), the commissioner may waive any continuing education requirement for a nonresident public insurance adjuster with a valid license from another state having continuing education requirements substantially equivalent to those of this state.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.110. RECORD MAINTENANCE. (a) A license holder shall keep a complete record in this state of each of the license holder's transactions as a public insurance adjuster. The records must include each of the following:

- (1) the name of the insured;
- (2) the date, location, and amount of the loss;

- (3) a copy of the contract between the license holder and the insured;
 - (4) the name of the insurer and the amount, expiration date, and number of each policy under which the loss is covered;
 - (5) an itemized statement of the recoveries by the insured from the sources known to the license holder;
 - (6) the total compensation received for the adjustment; and
 - (7) an itemized statement of disbursements made by the license holder from recoveries received on behalf of the insured.
- (b) Records required to be kept under this section must be:
- (1) maintained in this state for at least five years after the termination of a transaction with the insured; and
 - (2) open to examination by the commissioner.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.111. FIDUCIARY CAPACITY. (a) All funds received as claim proceeds by a license holder acting as a public insurance adjuster are received and held by the license holder in a fiduciary capacity. A license holder may not divert or appropriate fiduciary funds received or held.

(b) An applicant for a license to act as a public insurance adjuster must, as part of the application, endorse an authorization for disclosure to the commissioner of all financial records of any funds the public insurance adjuster holds as a fiduciary. The authorization continues in force and effect for as long as the license holder continues to be licensed under this chapter.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.112. RELOCATION TO ANOTHER STATE. (a) Not later than the 30th day after moving from one state to another state, a nonresident or resident public insurance adjuster licensed in this state shall file with the department:

(1) the license holder's new address; and

(2) proof of authorization to engage in the business of public insurance adjuster in the new state of residence if that state requires licensure of public insurance adjusters.

(b) The department may not charge a fee or require a license application under Subsection (a).

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.113. ADVERTISEMENTS. Each advertisement by a license holder soliciting or advertising business must display the license holder's name, address, and license number as they appear in the records of the commissioner.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.114. DUTIES OF NONRESIDENT LICENSE HOLDER. (a) A nonresident license holder shall comply with all of the requirements of this chapter in performing any of the activities of a public insurance adjuster in this state, including the requirements on record maintenance in Section 4102.110.

(b) The failure of a nonresident license holder, as determined by the commissioner after notice and an opportunity for a hearing, to properly maintain records in accordance with this chapter and make them available to the department on request constitutes grounds for the suspension of the nonresident license issued under this chapter, in accordance with Section 4102.201.

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

(d) After licensure as a nonresident public insurance adjuster, as a condition of doing business in this state, the license holder must annually, not later than January 1 and on a form prescribed by the commissioner, submit an affidavit certifying that the licensee is familiar with and understands the laws specified in Section 4102.057(b), the applicable rules adopted under those laws, and the terms and conditions of the types of insurance contracts that provide coverage on real and personal property. Compliance with the filing requirement provided by this

subsection is necessary for the issuance, continuation, reinstatement, or renewal of a nonresident public insurance adjuster license.

(e) A nonresident license holder is subject to Section 4102.208(b), relating to failure to maintain the financial responsibility requirements.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

SUBCHAPTER D. PROHIBITED CONDUCT

Sec. 4102.151. SOLICITATION PROHIBITED DURING NATURAL DISASTER. A license holder may not solicit or attempt to solicit a client for employment during the progress of a loss-producing natural disaster occurrence.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.152. SOLICITATION PROHIBITED DURING CERTAIN HOURS. (a) A license holder may not solicit or attempt to solicit business on a loss or a claim in person, by telephone, or in any other manner at any time except between the hours of 9 a.m. and 9 p.m. on a weekday or a Saturday and between noon and 9 p.m. on a Sunday.

(b) This section does not prohibit a license holder from accepting phone calls or personal visits during the prohibited hours from an insured on the insured's initiation.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.153. CERTAIN REPORTS AND DISCLOSURES PROHIBITED. A license holder may not knowingly make any false report to the license holder's employer or client and may not divulge to any other person, except as the law may require, any information obtained except at the direction of the employer or the client for whom the information is obtained.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.154. **USE OF BADGE PROHIBITED.** A license holder may not use a badge in connection with the official activities of the license holder's business.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.155. **CERTAIN DELEGATION PROHIBITED.** A license holder may not permit an employee or agent, in the employee's or agent's own name, to advertise, solicit or engage clients, furnish reports or present bills to clients, or in any manner conduct business for which a license is required under this chapter.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.156. **PRACTICE OF LAW PROHIBITED.** A license holder may not render services or perform acts that constitute the practice of law, including the giving of legal advice to any person in the license holder's capacity as a public insurance adjuster.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.157. **CERTAIN BUSINESS PROHIBITED.** A license holder may not solicit or attempt to solicit business, directly or indirectly, or act in any manner on a bodily injury loss covered by a life, health, or accident insurance policy or on any claim for which the client is not an insured under the insurance policy.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.158. CONFLICTS OF INTEREST PROHIBITED. (a) A license holder may not:

(1) participate directly or indirectly in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the license holder; or

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

(b) A license holder may not, without the knowledge and consent of the insured in writing, acquire an interest in salvaged property that is the subject of a claim adjusted by the license holder.

(c) A license holder may not represent an insured on a claim or charge a fee to an insured while representing the insurance carrier against which the claim is made.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.159. MISREPRESENTATION PROHIBITED. A license holder may not use any misrepresentation to solicit a contract or agreement to adjust a claim.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.160. CERTAIN PAYMENTS PROHIBITED. A license holder may not:

(1) advance money to any potential client or insured;

(2) pay, allow, or give, or offer 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 based on the insured entering into a contract with that public insurance adjuster; or

(3) otherwise offer 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.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.161. CERTAIN REPRESENTATIONS PROHIBITED. A license holder may not use any letterhead, advertisement, or other printed matter, or use any other means, to represent that the license holder is an instrumentality of the federal government, of a state, or of a political subdivision of a state.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.162. USE OF DIFFERENT NAME PROHIBITED. A license holder may not use a name different from the name under which the license holder is currently licensed in an advertisement, solicitation, or contract for business.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

SUBCHAPTER E. ENFORCEMENT

Sec. 4102.201. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The commissioner may deny an application for a license under this chapter or suspend or revoke a license issued under this chapter on the basis of:

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

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

(3) misrepresentation or fraud in obtaining a license;

(4) failure to pass a required license examination;

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

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

(7) engaging in a fraudulent transaction;

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

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

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

(b) If the department proposes to refuse to issue an original license under this chapter or to suspend, revoke, or refuse to renew a license under this chapter, the person affected is entitled to notice and hearing as provided by Section 4005.104.

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

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

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

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

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.202. APPLICATION FOR LICENSE AFTER SUSPENSION, DENIAL OF APPLICATION, OR REVOCATION OF LICENSE. (a) A person whose license is suspended under this chapter may apply for a new license only after the expiration of the period of suspension.

(b) A person whose license is revoked or whose application for a license is denied, except for a failure to submit a completed application, may not apply for a new license until the fifth anniversary of:

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

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

(c) The commissioner may deny a timely application filed under Subsection (b) if the applicant does not show good cause why the denial of the previous license application or the revocation of the license should not be considered a bar to the issuance of the new license.

(d) Subsection (c) does not apply to an applicant whose license application was denied for failure by the applicant to:

(1) pass the required written examination; or

(2) submit a properly completed license application.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.203. DISCIPLINARY PROCEEDING FOR CONDUCT COMMITTED BEFORE SURRENDER OR FORFEITURE OF LICENSE. (a) The department may institute a disciplinary proceeding against a former license holder for conduct that the license holder committed before the effective date of a voluntary surrender or automatic forfeiture of the license.

(b) In a proceeding under this section, the fact that the license holder has surrendered or forfeited the license does not affect the license holder's culpability for the conduct.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.204. ADMINISTRATIVE PENALTY. The commissioner, in lieu of suspending or revoking a license for a violation of this chapter or a rule adopted under this chapter, may impose on a license holder an administrative penalty in an amount not to exceed \$2,000 per violation if the commissioner determines that that action better serves the purposes of this chapter.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.205. AUTOMATIC FINES. Section 4005.109 applies to violations of this chapter.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.206. CRIMINAL PENALTY; SANCTIONS. (a) A person commits an offense if the person violates this chapter. An offense under this subsection is a Class B misdemeanor.

(b) If conduct that constitutes an offense under Subsection (a) also constitutes an offense under any other law, the person committing the offense may be prosecuted under this section or the other law.

(c) In addition to the criminal penalties imposed under Subsection (a), a person in violation of this chapter is subject to the sanctions provided by Sections 541.108-541.110, as if the person had violated an order under those sections.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.207. INSURED OPTION TO VOID CONTRACT. (a) Any contract for services regulated by this chapter that is entered into by an insured with a person who is in violation of Section 4102.051 may be voided at the option of the insured.

(b) If a contract is voided under this section, the insured is not liable for the payment of any past services rendered, or future services to be rendered, by the violating person under that contract or otherwise.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.208. EMERGENCY CEASE AND DESIST ORDER. (a) If the commissioner believes that a person is engaging in acts or practices in violation of Section 4102.051, the commissioner ex parte may issue an emergency cease and desist order, in accordance with Subchapter B, Chapter 83, requiring the person to immediately cease and desist from engaging further in the acts or practices.

(b) In addition to any other remedy available under this code, if the commissioner believes that a person is committing a violation by failing to maintain the financial responsibility requirements of Section 4102.105, the commissioner ex parte may issue an emergency cease and desist order and suspend the person's license, in accordance with Subchapter B, Chapter 83, requiring the person to immediately cease and desist from engaging in the activities of a public insurance adjuster.

(c) A license suspended under Subsection (b) may be reinstated on the approval of an application for reinstatement filed with the commissioner, in the form prescribed by the commissioner, with proof that the financial responsibility requirements of Section 4102.105 have been met. The commissioner may deny the application for reinstatement:

(1) for any reason that would justify a refusal to issue, or a suspension or revocation of, a license; or

(2) for the performance by the applicant of any practice for which a license under this chapter is required while the applicant is under suspension for failure to keep the financial responsibility requirements in force.

Added by Acts 2005, 79th Leg., Ch. [728](#), Sec. 11.082(a), eff. September 1, 2005.