

1-1 By: Hinojosa S.B. No. 1060
 1-2 (In the Senate - Filed March 9, 2015; March 16, 2015, read
 1-3 first time and referred to Committee on Business and Commerce;
 1-4 May 11, 2015, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 0; May 11, 2015,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14			X	
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1060 By: Taylor of Galveston

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the regulation of public insurance adjusters.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Section 4102.051(a), Insurance Code, is amended
 1-24 to read as follows:

1-25 (a) A person may not act as a public insurance adjuster in
 1-26 this state or hold himself or herself out to be a public insurance
 1-27 adjuster in this state unless the person holds a license [~~or~~
 1-28 ~~certificate~~] issued by the commissioner under Section 4102.053
 1-29 ~~or~~ [7] 4102.054 [~~7~~, ~~or~~ 4102.069].

1-30 SECTION 2. Sections 4102.066(a) and (b), Insurance Code,
 1-31 are amended to read as follows:

1-32 (a) The commissioner shall collect in advance the following
 1-33 nonrefundable fees:

1-34 (1) for a public insurance adjuster license, an
 1-35 application fee in an amount to be determined by rule by the
 1-36 commissioner;

1-37 (2) for a nonresident public insurance adjuster
 1-38 license, an application fee in an amount to be determined by rule by
 1-39 the commissioner; and

1-40 (3) for each public insurance adjuster examination, a
 1-41 fee in an amount to be determined by rule by the commissioner [~~7~~, and

1-42 [~~4~~] for a public insurance adjuster trainee
 1-43 ~~certificate under Section 4102.069, a registration fee in an amount~~
 1-44 ~~to be determined by rule by the commissioner].~~

1-45 (b) The amount of the fee for the renewal of a license [~~or a~~
 1-46 ~~certificate~~] issued under this chapter shall be determined by rule
 1-47 by the commissioner.

1-48 SECTION 3. Section 4102.103, Insurance Code, is amended by
 1-49 adding Subsection (d) to read as follows:

1-50 (d) A license holder may not enter into a contract with an
 1-51 insured and collect a commission as provided by Section 4102.104
 1-52 without the intent to actually perform the services customarily
 1-53 provided by a licensed public insurance adjuster for the insured.

1-54 SECTION 4. Section 4102.104(d), Insurance Code, is amended
 1-55 to read as follows:

1-56 (d) A public insurance adjuster may not accept any payment
 1-57 that violates the provisions of this section [~~Subsection (c)~~].

1-58 SECTION 5. Section 4102.158, Insurance Code, is amended by
 1-59 amending Subsection (a) and adding Subsections (d), (e), and (f) to
 1-60 read as follows:

2-1 (a) A license holder may not:
2-2 (1) participate directly or indirectly in the
2-3 reconstruction, repair, or restoration of damaged property that is
2-4 the subject of a claim adjusted by the license holder; or

2-5 (2) engage in any other activities that may reasonably
2-6 be construed as presenting a conflict of interest, including
2-7 soliciting or accepting any remuneration from, ~~[or]~~ having a
2-8 financial interest in, or deriving any direct or indirect financial
2-9 benefit from, any salvage firm, repair firm, construction firm, or
2-10 other firm that obtains business in connection with any claim the
2-11 license holder has a contract or agreement to adjust.

2-12 (d) A license holder may not directly or indirectly solicit,
2-13 as described by Chapter 38, Penal Code, employment for an attorney
2-14 or enter into a contract with an insured for the primary purpose of
2-15 referring an insured to an attorney and without the intent to
2-16 actually perform the services customarily provided by a licensed
2-17 public insurance adjuster. This section may not be construed to
2-18 prohibit a license holder from recommending a particular attorney
2-19 to an insured.

2-20 (e) A license holder may not act on behalf of an attorney in
2-21 having an insured sign an attorney representation agreement.

2-22 (f) A license holder must become familiar with and at all
2-23 times act in conformance with the criminal barratry statute set
2-24 forth in Section 38.12, Penal Code.

2-25 SECTION 6. Section 4102.160, Insurance Code, is amended to
2-26 read as follows:

2-27 Sec. 4102.160. CERTAIN PAYMENTS PROHIBITED. A license
2-28 holder may not:

2-29 (1) advance money to any potential client or insured;
2-30 or

2-31 (2) pay, allow, or give, or offer to pay, allow, or
2-32 give, directly or indirectly, to a person who is not a licensed
2-33 public insurance adjuster a fee, commission, or other valuable
2-34 consideration for the referral of an insured to the public
2-35 insurance adjuster for purposes of [based on] the insured entering
2-36 into a contract with that public insurance adjuster or for any other
2-37 purpose[~~, or~~

2-38 ~~[(3) otherwise offer to pay a fee, commission, or~~
2-39 ~~other valuable consideration exceeding \$100 to a person not~~
2-40 ~~licensed as a public insurance adjuster for referring an insured to~~
2-41 ~~the license holder].~~

2-42 SECTION 7. Subchapter D, Chapter 4102, Insurance Code, is
2-43 amended by adding Section 4102.164 to read as follows:

2-44 Sec. 4102.164. ACCEPTANCE OF REFERRAL PAYMENTS PROHIBITED.

2-45 (a) A licensed public insurance adjuster may not accept a fee,
2-46 commission, or other valuable consideration of any nature,
2-47 regardless of form or amount, in exchange for the referral by a
2-48 licensed public insurance adjuster of an insured to any third-party
2-49 individual or firm, including an attorney, appraiser, umpire,
2-50 construction company, contractor, or salvage company.

2-51 (b) The commissioner shall adopt rules necessary to
2-52 implement and enforce this section.

2-53 SECTION 8. Section 4102.069, Insurance Code, is repealed.

2-54 SECTION 9. The repeal by this Act of Section 4102.069,
2-55 Insurance Code, does not affect the authority of a person to act
2-56 under a temporary certificate issued by the Texas Department of
2-57 Insurance under that section before the effective date of this Act.

2-58 SECTION 10. Sections 4102.103(d) and 4102.158(d),
2-59 Insurance Code, as added by this Act, apply only to a contract
2-60 entered into or solicitation made on or after the effective date of
2-61 this Act.

2-62 SECTION 11. (a) Except as provided by this section,
2-63 Section 4102.104, Insurance Code, as amended by this Act, applies
2-64 only to payment accepted on or after the effective date of this Act.

2-65 (b) Payment for a service performed before the effective
2-66 date of this Act or performed after the effective date of this Act
2-67 under a contract entered into before the effective date of this Act
2-68 is governed by the law as it existed immediately before the
2-69 effective date of this Act, and that law is continued in effect for

3-1 that purpose.

3-2 SECTION 12. Section 4102.160, Insurance Code, as amended by
3-3 this Act, and Section 4102.164, Insurance Code, as added by this
3-4 Act, apply only to a referral made on or after the effective date of
3-5 this Act. A referral made before the effective date of this Act is
3-6 governed by the law as it existed immediately before the effective
3-7 date of this Act, and that law is continued in effect for that
3-8 purpose.

3-9 SECTION 13. The changes in law made by this Act apply only
3-10 to an offense committed on or after the effective date of this Act.
3-11 An offense committed before the effective date of this Act is
3-12 governed by the law in effect when the offense was committed, and
3-13 the former law is continued in effect for that purpose. For
3-14 purposes of this section, an offense was committed before the
3-15 effective date of this Act if any element of the offense occurred
3-16 before that date.

3-17 SECTION 14. This Act takes effect September 1, 2015.

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