

BILL ANALYSIS

S.B. 1060
By: Hinojosa
Insurance
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties have expressed their concerns regarding the large number of lawsuits currently pending in courts across Texas that allege underpayment of hail damage claims, and the parties note that these lawsuits are predominantly located in counties where significant hail storms have occurred in the past few years. The parties say that the lawsuits typically originate with certain licensed public insurance adjusters directly contacting a property owner by knocking on the owner's door and promising a free roof because of alleged hail damage. The parties further explain that an old roof is likely to exhibit characteristics that can be alleged to have resulted from hail damage and that certain adjusters will continue in those cases, in an attempt to reasonably resolve such claims, to work to demonstrate to the insurance company that the damage resulted from hail. However, the parties assert that there are other adjusters who simply act as conduits for lawyers. The parties contend that these adjusters have no intention of adjusting the claim but, rather, immediately refer the property owner to a lawyer. There are concerns that an industry is emerging in which adjusters take advantage of insurance claims for significant personal financial gain, specifically in hail storm situations. The parties maintain that this practice needs to be stopped because it affects homeowners' insurance premiums and coverage and is significantly increasing insurance costs for all Texans. S.B. 1060 seeks to address this issue by amending current law relating to the regulation of public insurance adjusters.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTION 7 of this bill.

ANALYSIS

S.B. 1060 amends the Insurance Code to prohibit a licensed public insurance adjuster from entering into a contract with an insured and collecting a commission without the intent to actually perform the services customarily provided by a licensed public insurance adjuster for the insured.

S.B. 1060 expands the prohibition against a licensed public insurance adjuster accepting any payment that violates the requirement that all persons paying any proceeds of a policy of insurance or making any payment affecting an insured's rights under a policy of insurance 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 to include in that prohibition the violation of any of the statutory provisions regarding commissions for services provided under

the statutory provisions governing licensed public insurance adjusters. The bill provides that payment for a service performed under statutory provisions regarding commissions of a licensed public insurance adjuster that are performed before the bill's effective date or that are performed after the bill's effective date under a contract entered into before the bill's effective date is governed by the law as it existed immediately before the bill's effective date.

S.B. 1060 expands, for purposes of statutory provisions governing the prohibited conduct of licensed public insurance adjusters, the prohibition against an adjuster engaging in activities that may be reasonably construed as presenting a conflict of interest to include 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 adjuster has a contract or agreement to adjust and includes a construction firm among the firms from which or in which an adjuster is prohibited from soliciting or accepting any remuneration or having a financial interest. The bill prohibits a licensed public insurance adjuster from directly or indirectly soliciting employment, as that term is described by Penal Code provisions relating to obstructing governmental operations, for an attorney or entering 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. The bill prohibits statutory provisions and bill provisions relating to licensed public insurance adjuster conflicts of interest from being construed to prohibit a licensed public insurance adjuster from recommending a particular attorney to an insured. The bill prohibits a licensed public insurance adjuster from acting on behalf of an attorney in having an insured sign an attorney representation agreement. The bill requires a licensed public insurance adjuster to become familiar with and at all times act in conformance with the criminal barratry statute set forth in the Penal Code.

S.B. 1060 revises the statutory provision prohibiting a licensed public insurance adjuster from paying, allowing, or giving or offering to pay, allow, or give a fee, commission, or other valuable consideration to a person who is not a licensed public insurance adjuster for the referral of an insured to that adjuster for the purposes of the insured entering into a contract with that adjuster by specifying that the prohibition is also applicable to a referral for any other purpose and by removing certain provisions to conform that statutory provision to that added specification.

S.B. 1060 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. The bill requires the commissioner of insurance to adopt rules necessary to implement and enforce the prohibition on the acceptance of referral payments.

S.B. 1060 repeals a statutory provision relating to the public insurance adjuster trainee registration program, which requires a public insurance adjuster trainee to register with the Texas Department of Insurance for a temporary certificate, and specifies that the repeal of this provision does not affect the authority of a person to act under such a temporary certificate issued before the bill's effective date.

S.B. 1060 repeals Section 4102.069, Insurance Code.

EFFECTIVE DATE

September 1, 2015.