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SB-240 Insurance Adjuster Act. (2019-2020)

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Senate Bill No. 240

CHAPTER 502

An act to amend Sections 1722, 14020, 14022, 14022.5, 14023, 14037, and 14065 of, and to add Sections 14046, 14047, and 14064.5 to, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 03, 2019. Filed with Secretary of State October 03, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 240, Dodd. Insurance Adjuster Act.

Existing law creates the Department of Insurance, headed by the Insurance Commissioner, and prescribes the department's powers and duties. Existing law, the Insurance Adjuster Act, sets forth various requirements with respect to operation as an insurance adjuster in this state and prohibits a person from engaging in a business regulated by the act, or acting or assuming to act as, or representing themselves to be, an insurance adjuster unless the person is licensed under the act. Existing law also prohibits a person from falsely representing that the person is employed by a licensee. Existing law exempts a person from the requirements of the Insurance Adjuster Act if the person is employed exclusively and regularly by one employer, as specified, with which the person has an employer-employee relationship. If the commissioner declares an emergency situation, existing law authorizes a nonlicensed insurance adjuster to adjust claims if certain requirements are met, including that the nonlicensed insurance adjuster registers with the commissioner via a written letter naming the nonlicensed adjuster, identifying adjuster licenses held in other jurisdictions, and stating when the claims adjusting activity began in the emergency situation. Existing law requires an insurer to provide an insured with a written status report if the insurer assigns a 3rd or subsequent adjuster to be primarily responsible for a claim within a 6-month period. Existing law provides that if a specified licensee, not including an insurance adjuster, enters the military service of the United States and is in the military service at the time of filing a license renewal application, the application filing is waived and the license remains in force during the licensee's military service and for a specified time afterward.

This bill would require an insurer to establish a primary point of contact for a claim under a policy of residential property insurance and provide the insured with one or more direct means of communication with the primary point of contact if, within a 6-month period, the insurer assigns a 3rd or subsequent first-party real or personal property claims adjuster to be primarily responsible for a claim. The bill would require the primary point of contact to remain assigned to the insured's claim until the insurer determines that the claim is closed or litigation has been filed.

This bill would add insurance adjusters to the list of licensees whose application filing is waived during military service and for whom a license remains in force during military service.

This bill would require the department to annually prepare and deliver to every Insurance Adjuster Act licensee a notice describing the most significant California laws pertaining to property policies, as well as a handbook for adjusting in California that includes

information relevant to evaluating damage caused by an emergency. The bill would require the commissioner to make the notice, handbook, and certification process, as described below, accessible on the department's internet website.

This bill would require a licensee or insurer to register a nonlicensed insurance adjuster, not including a nonlicensed adjuster employed exclusively and regularly by one employer with which there exists an employer-employee relationship, no later than 15 calendar days from the date on which the nonlicensed adjuster began claims adjusting activity in California in connection with an emergency situation as declared by the commissioner. The bill would require a supervising licensed adjuster or manager to ensure their registered nonlicensed adjusters and employee nonlicensed adjusters have read and understand the most recent significant law notice and adjusting handbook no later than 15 calendar days from the date on which the nonlicensed adjuster began claims adjusting activity in California after a declared state of emergency. The bill would require a registered nonlicensed adjuster, under penalty of perjury, to certify that the nonlicensed adjuster has read and understands the notice and handbook no later than 15 calendar days from the date on which the nonlicensed adjuster began claims adjusting activity in California in connection with an emergency situation as declared by the commissioner. By expanding the scope of the crime of perjury, the bill would impose a state-mandated local program. The bill would also make technical, nonsubstantive changes to those provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1722 of the Insurance Code is amended to read:

1722. If a natural person while licensed pursuant to the provisions of this chapter or Chapter 6 (commencing with Section 1760), Chapter 7 (commencing with Section 1800), or Chapter 8 (commencing with Section 1831) of this part, Part 5 (commencing with Section 12140) of Division 2, or Chapter 1 (commencing with Section 14000) or Chapter 2 (commencing with Section 15000) of Division 5 enters the military service of the United States and is in that service at a time prescribed for the filing of a renewal application, the filing of that application is waived, and the license held by that licensee at the time of the licensee's entry into military service shall remain in force during the period of that military service and until the end of the license year in which the licensee is released from that service, but not for less than six months after that release. During that period, the licensee may secure a license of the type held by the licensee upon entry into military service upon the filing of an application and paying the fee therefor without the necessity of taking an examination or paying a penalty.

SEC. 2. Section 14020 of the Insurance Code is amended to read:

14020. (a) A person shall not engage in a business regulated by this chapter, or act or assume to act as, or represent themselves to be, a licensee unless the person is licensed under this chapter.

(b) A person shall not falsely represent that the person is employed by a licensee.

SEC. 3. Section 14022 of the Insurance Code is amended to read:

14022. This chapter does not apply to:

(a) (1) A person employed exclusively and regularly by one employer in connection with the affairs of the employer only and if there exists an employer-employee relationship, except as provided in paragraph (2).

(2) After a declared state of emergency, as defined in Section 8558 of the Government Code, or other emergency declared by a public official, a person licensed under this chapter or a qualified manager shall require that all nonlicensed adjusters under the supervision of that person or manager read and understand the most recent notice and adjuster handbook prepared by the department pursuant to subdivision (a) of Section 14046 no later than 15 calendar days from the date on which the nonlicensed adjuster began claims adjusting activity in California.

(3) In enforcing this chapter, the department shall not be required to investigate whether a person is employed exclusively and regularly by one employer pursuant to paragraph (1).

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while that officer or employee is engaged in the performance of official duties.

- (c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.
- (d) A charitable philanthropic society or association duly incorporated under the laws of this state, which is organized and maintained for the public good and not for private profit.
- (e) An attorney performing the duties of an attorney.
- (f) A licensed collection agency or an employee thereof acting within the scope of employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or the debtor's property if the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.
- (g) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.
- (h) 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.
- (i) A bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of the Currency of the United States.
- (j) A person engaged solely in the business of securing information about persons or property from public records.
- (k) A building contractor, engineer, technical expert, or other person who is engaged by an insurer or licensed adjuster to provide an expert or professional evaluation of the extent, cause, or origin of damage to the insured property, but who does not otherwise participate in the process of adjusting claims.

SEC. 4. Section 14022.5 of the Insurance Code is amended to read:

14022.5. (a) In the event of an emergency situation as declared by the commissioner, claims arising out of the emergency, catastrophe, disaster, or other similar occurrence may be adjusted by a nonlicensed adjuster upon registration with the commissioner if all of the following requirements are met:

- (1) The work performed by the nonlicensed adjuster is under the active direction, control, charge, or management of a licensed adjuster or an insurer authorized to do business in this state.
 - (2) The licensee or insurer registers the nonlicensed adjuster with the commissioner no later than 15 calendar days from the date on which the nonlicensed adjuster began claims adjusting activity in California.
 - (3) The nonlicensed adjuster submits to the commissioner a certification in a form or other format specified by the commissioner, under penalty of perjury, that the adjuster has read and understands the most recent notice and the handbook for adjusting disaster claims prepared by the department pursuant to subdivision (a) of Section 14046.
- (b) "Registration" or "register," within the meaning of this section, means filing with the commissioner a notice in a form or other format specified by the commissioner, submitted by the supervising licensed adjuster or admitted insurer, naming the nonlicensed adjusters, identifying their adjuster licenses held in other jurisdictions, or, if not licensed, providing other identification specified by the commissioner, stating when their claims adjusting activity will commence or has commenced, and any other information the commissioner may require.
- (c) Registration for claims adjusting activities arising out of an emergency is valid for a period of 180 days from the date of the registration letter. Before the lapse of that period, the commissioner may grant further 180-day extensions as the commissioner deems appropriate upon written request from the supervising licensed adjuster or the admitted insurer.
- (d) A registration is not valid unless a current certification is on file with the commissioner.
- (e) In enforcing this chapter, the department shall not be required to investigate the employment or contractor status of a person registered pursuant to this section.
- (f) This section does not apply to a nonlicensed adjuster who meets the criteria described in paragraph (1) of subdivision (a) of Section 14022.

SEC. 5. Section 14023 of the Insurance Code is amended to read:

14023. An application for a license under this chapter shall be on a form prescribed by the commissioner and accompanied by the application fee provided by this chapter.

SEC. 6. Section 14037 of the Insurance Code is amended to read:

14037. A licensee shall at all times be legally responsible for the good conduct in the business of each of the licensee's employees or agents, including the licensee's manager and any nonlicensed adjusters the licensee registers pursuant to Section 14022.5.

SEC. 7. Section 14046 is added to the Insurance Code, to read:

14046. (a) (1) The department shall annually prepare and deliver to every person licensed under this chapter and every insurer admitted in this state a notice describing the most significant California laws pertaining to property insurance policies, including those related to a declared state of emergency, as defined in Section 8558 of the Government Code, or other emergency declared by a public official.

(2) The department shall prepare and deliver to every person licensed under this chapter a handbook for adjusting in California that includes information relevant to evaluating damage caused by an emergency, catastrophe, disaster, or other similar occurrence, including wildfires. The handbook shall be the similar or equivalent to one hour of continuing education for licensees.

(b) For a claim under a policy of residential property insurance arising as a result of a declared state of emergency, as defined in Section 8558 of the Government Code, or other emergency declared by a public official, an insurer shall provide the claimant with a copy of the most recent notice described in paragraph (1) of subdivision (a) no later than 15 calendar days from the date on which the insurer received notice of the claim.

(c) After a declared state of emergency, as defined in Section 8558 of the Government Code, or other emergency declared by a public official, a supervising licensed adjuster shall require any nonlicensed adjuster it has registered with the department pursuant to subdivision (b) of Section 14022.5 and any nonlicensed adjuster exempted from this chapter pursuant to subdivision (a) of Section 14022 to read and understand the most recent notice described in paragraph (1) of subdivision (a) and the most recent handbook described in paragraph (2) of subdivision (a) no later than 15 calendar days from the date on which the nonlicensed adjuster began claims adjusting activity in California.

(d) The commissioner shall make the notice described in paragraph (1) of subdivision (a), the handbook described in paragraph (2) of subdivision (a), and the certification process required pursuant to paragraph (3) of subdivision (a) of Section 14022.5 accessible through a dedicated page on the department's internet website.

SEC. 8. Section 14047 is added to the Insurance Code, to read:

14047. (a) For a claim under a policy of residential property insurance arising as a result of a state of emergency, as defined in subdivision (b) of Section 8558 of the Government Code, if, within a six-month period, an insurer assigns a third or subsequent first-party real or personal property claims adjuster to be primarily responsible for a claim, the insurer, in a timely manner, shall provide the insured with a written status report, establish a primary point of contact for the insured, and provide the insured with one or more direct means of communication with the primary point of contact.

(b) The primary point of contact shall be available to respond to inquiries by the insured related to the residential property insurance claim. Other claims personnel, vendors, or professionals, including clerical staff members and call center staff members, may work on portions of the insured's claim. Once assigned, the primary point of contact shall remain assigned to the insured's claim until the insurer determines that the residential property claim is closed or litigation has been filed.

(c) The insurer shall ensure that the primary point of contact refers and transfers an insured to the appropriate supervisor with a span of control over the primary point of contact upon the request of the insured. This process shall be satisfied by a referral to a first-tier or second-tier manager with authority over claim handling.

(d) For purposes of this section:

(1) "Policy of residential property insurance" has the same meaning as defined in Section 10087.

(2) "Primary point of contact" means a first-party real or personal property claims adjuster or team employed as a member or members of the insurer's staff who are knowledgeable about the claim and its current status.

SEC. 9. Section 14064.5 is added to the Insurance Code, to read:

14064.5. (a) The commissioner may, at any time, deny, suspend, or revoke a nonlicensed adjuster's registration under Section 14022.5, or impose a restricted registration, in the same manner and on the same grounds as the commissioner may for a license

as set forth in Sections 14026.5 to 14028.5, inclusive.

(b) The commissioner may deny, suspend, revoke, or restrict an adjusting firm's license if a nonlicensed adjuster registered by the firm pursuant to Section 14022.5 commits an act that would give rise to suspension, revocation, or restriction of the firm's license under Section 14038, 14039, or 14061 to 14064, inclusive.

SEC. 10. Section 14065 of the Insurance Code is amended to read:

14065. The commissioner, in lieu of suspending or revoking a license issued under this chapter for violations of Sections 14061, 14063, 14064, and 14064.5, may impose a civil penalty not to exceed five hundred dollars (\$500) upon a licensee, if the commissioner determines that a penalty better serves the purposes of this chapter.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 12. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

To ensure that independent adjusters and consumers have easy access to important information about California law directly relating to insurance benefits and claims arising from an emergency before the next emergency is declared, it is necessary that this act take effect immediately.