

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 1248

INTRODUCER: Senator Diaz de la Portilla

SUBJECT: Prohibited Insurance Practices

DATE: February 15, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Pre-meeting
2.			AGG	
3.			AP	

I. Summary:

SB 1248 expands the prohibition against a licensed contractor adjusting claims unless the contractor is a licensed public adjuster to include a person that performs emergency remediation or restoration services under an insurance policy and subcontractors to a licensed contractor. The bill also requires that persons that perform emergency remediation or restoration services under an insurance policy, contractors, and subcontractors to contractors:

- May not interpret or advise the insured regarding coverages or obligations under the insurance policy;
- Provide the insured a detailed estimate of the services to be provided before the execution of any agreement to provide services; and
- Provide the insured a 5-day right of rescission in the agreement.

The bill provides that a person or entity may not give a referral fee, commission, bonus, kickback, or rebate, or engage in any split-fee arrangement, with any person or entity for any repair, mitigation, or restoration service if the repair, mitigation, or restoration service is for an amount greater than \$25 and is covered under an insurance policy. The bill provides that the Department of Financial Services (DFS) will enforce the provision prohibiting referral fees. The department may impose a fine no greater than \$10,000 per violation and may recommend to the appropriate licensing board that disciplinary action be taken if the violator is a licensee.

The bill takes effect July 1, 2016.

II. Present Situation:

Public Adjusters

A public adjuster is hired and paid for by the policyholder to act on his or her behalf in a claim the policyholder files against an insurance company. Public adjusters can represent a

policyholder in any type of insurance claim, not just property insurance claims. Public adjusters, unlike company employee adjusters, operate independently and are not affiliated with any insurance company. Independent and company employee adjusters work for insurance companies. The Department of Financial Services (DFS) regulates all types of adjusters.

Section 626.854, F.S., defines “public adjuster” and contains provisions relating to the practice of public adjusting. For example, an insured has the right to rescind a contract within 3 days of execution.¹

Assignment of Benefits

In recent years, insurers have complained of abuse of the assignment of benefits process by companies that perform emergency remediation and restoration services. An insurance company recently described the issue in a court filing:

The typical scenario surrounding the use of an “assignment of benefits” involved vendors and contractors, mostly water remediation companies, who were called by an insured immediately after a loss to perform emergency remediation services, such as water extraction. The vendor came to the insured’s home and, before performing any work, required the insured to sign an “assignment of benefits” – when the insured would be most vulnerable to fraud and price-gouging. Vendors advised the insured, “We’ll take care of everything for you.” The vendor then submitted its bill to the insurer that was, on average, nearly 30 percent higher than comparative estimates from vendors without an assignment of benefits. Some vendors added to the invoice an additional 20 percent for “overhead and profit,” even though a general contractor would not be required or hired to oversee the work. Vendors used these inflated invoices to extract higher settlements from insurers. This, in turn, significantly increases litigation over the vendors’ invoices.²

Some of the vendors in litigation involving assignment of benefits are contractors regulated by the Department of Business and Professional Regulation. Water remediation companies are not regulated.

The Public Adjuster Statute and Assignment of Benefits Litigation

Subsection 626.854(16), F.S., prohibits licensed contractors or subcontractors from adjusting claims unless they are licensed as public adjusters. Contractors are allowed to discuss or explain a bid for construction or repair of covered property but are not allowed to adjust the claim. In recent litigation over assignment of benefits, insurers have argued that vendors such as contractors or water remediation companies have acted as public adjusters in violation of the

¹ See s. 626.854(7), F.S.

² See *Security First Insurance Company v. State of Florida, Office of Insurance Regulation*, Case 1D14-1864 (Fla. 1st DCA), Appellant’s Initial Brief at pp. 3-4. (appellate record citations omitted).

law.³ Section 626.854, F.S., does not contain an explicit prohibition on vendors such as water remediation companies adjusting claims.

Payment for Referrals

Insurers have complained of practices where water remediation companies pay plumbers referral fees if the plumbers refers business to the water remediation companies.⁴ In general, chapter 455, F.S., the licensing statute for many construction professionals, does not prohibit such arrangements.⁵ Subsection 626.854(13), F.S., prohibits public adjusters from paying referral fees.

III. Effect of Proposed Changes:

Section 1 of this bill amends s. 626.854, F.S., to prohibit a person that performs emergency remediation or restoration services from adjusting a claim on behalf of the insured unless the person is licensed as a public adjuster. The bill provides that subcontractors have the same prohibition against adjusting claims as contractors.

The bill provides that persons that perform emergency remediation or restoration services, contractors, or subcontractors:

- May not interpret or advise the insured regarding coverages or obligations under the insurance policy.
- Must provide the insured a detailed estimate of the services to be provided before the execution of any agreement to provide services; and
- Must provide the insured a 5-day right of rescission in the agreement. The rescission period begins once the insurer receives a copy of the fully executed agreement. The agreement may be sent by certified mail, e-mail, or facsimile to the claim handler. If the claim handler is not known, the agreement must be sent to the specific office handling the claim as indicated in the policy or as requested by the insurance company. If the insured rescinds the agreement, the agreement is rescinded ab initio, and the contractor, subcontractor, entity, or person is entitled to reasonable compensation for any necessary emergency mitigation services performed before the agreement was rescinded.

Section 2 creates s. 626.8699, F.S., which provides that a person or entity may not give a referral fee, commission, bonus, kickback, or rebate, or engage in any split-fee arrangement, with any person or entity for any repair, mitigation, or restoration service if the repair, mitigation, or restoration service is for an amount greater than \$25 and is covered under an insurance policy.

³ See *Bioscience West, Inc. v. Gulfstream Property and Casualty Insurance Co.*, Case No. 2D14-3946 (Fla. 2d DCA February 5, 2016)(rejecting the insurer's argument that the vendor unlawfully acted as a public adjuster); *One Call Property Services, Inc. v. Security First Ins. Co.*, 165 So.3d 749 (Fla. 4th DCA 2015)(declining to address the insurer's argument that the vendor acted as a public adjuster); *Restoration 1 CFL A/A/O I. Joy White v. State Farm Florida Insurance Company*, Case No. 5D15-1049 (Fla. 5th DCA) and *Start to Finish Restoration, LLC v. Homeowners Choice Property & Casualty Ins. Co.*, Case No. 2D-2206 (Fla. 2nd DCA)(appellees argue in briefs that the vendors engaged in illegal public adjusting; cases are pending before the courts).

⁴ See, e.g. <http://piff.net/assignment-of-benefits-insurance-reform-2015-legislative-proposals-fact-sheet/> (last accessed February 10, 2016).

⁵ Referral fees are prohibited for some professionals, such as mold remediators. See s. 468.8419(1), F.S.

The bill provides that the DFS will enforce the provision prohibiting referral fees. DFS may impose a fine no greater than \$10,000 per violation and may recommend to the appropriate licensing board that disciplinary action be taken if the violator is a licensee.

Section 3 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Water remediation companies and contractors working on property covered by property insurance will have to comply with new contractual provisions created by the bill. The fiscal impact is not known.

C. Government Sector Impact:

The Department of Financial Services does not anticipate a fiscal impact from the bill.⁶

VI. Technical Deficiencies:

Section 626.852(1), F.S., provides that part VI of ch. 626, F.S., applies only to insurance adjusters. It could be argued that the provision of this bill that prohibits referral fees, created in part VI of ch. 626, F.S., only relates to insurance adjusters and does not address the referral fee issue raised in the assignment of benefits context.

VII. Related Issues:

Section 1 of the bill amends s. 626.854(16), F.S., which prohibits contractors from engaging in public adjusting functions unless licensed as public adjusters. The bill amends this section to also

⁶ See Department of Financial Services, *Bill Analysis Senate Bill 1248* (January 13, 2016)(on file with the Committee on Banking and Insurance).

require contractors, subcontractors, and persons that perform emergency remediation or restoration services to provide a detailed estimate of the services provided and to grant an insured a 5-day right of rescission. An estimate regarding repair services and the terms of the contract to perform repairs are not related to the practice of insurance adjusting.

VIII. Statutes Affected:

This bill substantially amends section 626.854 of the Florida Statutes.

This bill creates section 626.8699 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.