

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2630

SPONSOR: Banking and Insurance Committee and Senator Atwater

SUBJECT: Public Adjusters

DATE: April 1, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

A public adjuster is a person who for compensation is retained by a policyholder, rather than an insurance company, to assist in preparing, filing, and adjusting an insurance claim. Committee Substitute for Senate Bill 2630 restricts certain activities and impose specified requirements on public adjusters in the following manner:

- Prohibits public adjusters from acting on behalf of or aiding third-party claimants;
- Prohibits public adjusters from aiding any person in negotiating or settling a claim relating to extra-contractual damages that are unrelated to the damages under the insurance policy, unfair claim practices violations, tort claims, or statutory interest, costs, and attorney's fees; however, such adjusters may consult with an attorney in pursuing claims for extra-contractual damages or unfair claims settlement practices;
- Requires public adjusters to ensure that contractors or other licensed professionals used in adjusting a claim must be licensed by the Florida Department of Business and Professional Regulation; and,
- Prohibits public adjusters from restricting or preventing an insurer, attorney, or other person acting on behalf of the insurer from having reasonable access at reasonable times to an insured or claimant or to the insured's property that is the subject of a claim.

This bill substantially amends section 626.854 of the Florida Statutes.

II. Present Situation:

Public Adjusters

Under the Insurance Code, there are three types of licensed adjusters in Florida: public adjusters,¹ independent adjusters,² and company employee adjusters.³ A fourth type, catastrophe and emergency adjusters, are unlicensed and only used in emergency situations.⁴ A public adjuster is an adjuster who works on behalf of a claimant rather than an insurance company. These adjusters aid claimants in filing insurance claims, investigating claims, and negotiating the settlement of a claim. However, a public adjuster is prohibited from acting on behalf of or aiding any person in negotiating or settling a claim relating to bodily injury, death, or noneconomic damages, or from giving legal advice.⁵ A public adjuster does not include a licensed health care provider who prepares or files a health insurance claim form on behalf of a patient, or a person who files a health claim on behalf of another and does so without compensation.

Public adjusters must be licensed by the Office of Insurance Regulation (OIR) based on specified qualifications which include having sufficient experience, training, or instruction concerning the adjusting of damages or losses under insurance contracts. These adjusters must pass a written examination and file a \$50,000 surety bond with the OIR prior to licensure. The bond must be in favor of the OIR and shall authorize recovery by that office of the damages sustained in case the licensee is guilty of fraud or unfair practices in connection with his or her business as a public adjuster. Representatives with the OIR state that there are currently 381 licensed public adjusters.⁶

In general, an adjuster may adjust in various classes of insurance including all lines insurance except life and annuities, motor vehicle physical damage insurance, property and casualty insurance, workers' compensation insurance, and health insurance.

Section 626.8698, F.S., creates disciplinary guidelines specifically for public adjusters. The OIR can deny, suspend, or revoke the license of a public adjuster as well as impose a fine of up to \$5,000 per act, if they violate the following:

¹ Section 626.854, F.S. A public adjuster is a person who, for compensation, prepares, completes, or files an insurance claim form for an insured or third-party claimant, or who, for compensation acts or aids in any manner on behalf of an insured or third-party claimant in negotiating for, or effecting the settlement of, a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims. An exception is provided for licensed attorneys. A public adjuster also includes any person who, for money, commission, or any thing of value, solicits, investigates, or adjusts such claims on behalf of any such public adjuster.

² Section 626.855, F.S. An independent adjuster is any person who is self-employed or is associated with or employed by an independent adjusting firm or other independent adjusters, and who undertakes on behalf of an insurer to ascertain and determine the amount of any claim payable under an insurance contract or undertakes to effect settlement of a claim.

³ Section 626.856, F.S. A company employee adjuster is an adjuster who is employed by an insurer or insurer's subsidiary, and who undertakes on behalf of an insurer to ascertain and determine the amount of any claim payable under an insurance contract or undertakes to effect settlement of a claim.

⁴ Section 626.859, F.S. Emergency adjusters are designated and certified by the Office of Insurance Regulation as qualified to adjust claims.

⁵ Section 626.854, F.S., also provides legislative intent language which states that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

⁶ There are 337 resident and 44 non-resident licensed public adjusters.

- any provision of ch. 626, F.S.;
- a rule or order of the OIR;
- receive payment as a result of an unfair or deceptive practice or receive or accept any fee, kickback, or other thing of value pursuant to any agreement or understanding, oral or otherwise;
- enter into a split-fee arrangement with another person who is not a public adjuster;
- be paid for services that have not been performed;
- violate s. 316.066, F.S., which prohibits the use of accident reports for commercial solicitation purposes, or s. 817.234, F.S., which is the criminal statute prohibiting the filing of a false or fraudulent insurance claim.
- solicit or take advantage of a person who is vulnerable, or otherwise upset as a result of a trauma, accident, or other similar occurrence; or
- violate any ethical rule of the Financial Services Commission.

There are further provisions under the Insurance Code (ss. 626.611 and 626.621, F.S.) which authorize general grounds for suspension or revocation of a license and related disciplinary provisions which apply to public adjusters, insurance agents, and other licensees under ch. 626, F.S. These provisions include demonstrated lack of fitness or trustworthiness, fraudulent or dishonest practices, misappropriations of funds, etc. In addition, in 1993, the Department of Insurance adopted by rule a code of ethical standards for all adjusters (Rule Chapter 4-220.201, F.A.C.) and the following year promulgated a rule pertaining to the conduct of public adjusters (Rule Chapter 4-200.051, F.A.C.).⁷

Rule 4-220.051(6), requires that all contracts for public adjuster services must be in writing and must be signed by the adjuster. Under rule 4-220.201(3), F.A.C., a violation of any provision of this rule constitutes grounds for administrative action against the public adjuster upon grounds that include, but are not limited to, that the violation demonstrates a lack of fitness to engage the business of insurance. That rule also provides:

- (4)(a), an adjuster must disclose all financial interest in any direct or indirect aspect of an adjusting transaction to the insured;
- (5)(a), a public adjuster shall advise the insured and claimant in advance of their right to choice of counsel to represent the insured or claimant.
- (5)(d), a public adjuster shall not prevent, or attempt to dissuade or prevent, a claimant from speaking privately with the insurer, company or independent adjuster, attorney, or any other person, regarding the settlement of the claim.
- (5)(f), a public adjuster shall not accept referrals of business from any person with whom the public adjuster may conduct business where there is any form or manner of agreement to compensate the person, whether directly or indirectly, for referring business to the public adjuster, except as between licensed public adjusters, or licensed public adjusters and members of the Florida Bar, no public adjuster may compensate any person, whether directly or indirectly, for the principal purpose of referring business to the public adjuster.

⁷ Now the Office of Insurance Regulation.

Further, s. 626.8738, F.S., provides that in addition to any other remedy imposed under the Insurance Code, any person who acts as a resident or nonresident public adjuster without being licensed is guilty of a third degree felony.

Issues relating to Public Adjusters

Proponents of the bill argue that some public adjusters engage in practices that obstruct an insurer's efforts to settle a claim. For example, these adjusters prevent access by an insurer to the insured or the insureds property. According to these proponents, public adjusters should not be involved in aiding third-party claimants or aiding insurers when such insureds sue their insurance company over "bad faith" claims.⁸ These proponents assert that although there are codes of ethics and conduct rules regulating the activities of public adjusters, these rules do not cover the specific prohibited activities described in the bill.

Representatives for public adjusters argue that some of the prohibitions in the legislation are largely covered under their code of ethics and conduct rules (outlined above), the violation of which could result in disciplinary action by the OIR. The bill's provisions could force an insured to hire an attorney or an accountant (instead of a public adjuster), since an adjuster would be prohibited from negotiating specified damages or unfair claims settlement practices, costs, or attorney's fees. For example, these representatives argue that currently adjusters may assist an insured in negotiating a business income damages claim, but would be precluded under the bill from negotiating the very same damages in the event of bad faith by the insurance carrier.

Officials with the OIR state that after Hurricane Andrew, which occurred in August 1992, there were many complaints by insureds against adjusters. The subject of these complaints resulted in the codifying of the two rules pertaining to codes of ethics and conduct rules and the legislation, outlined above, prohibiting certain actions by adjusters. According to representatives with OIR, the agency has not received complaints pertaining to public adjusters which involve the issues addressed in this bill.

III. Effect of Proposed Changes:

Section 1. Amends s. 626.854, F.S., pertaining to public adjusters. The bill prohibits public adjusters from preparing or filing an insurance claim form for a third-party claimant or, from aiding in any manner a third-party claimant. The measure further prohibits a public adjuster from acting on behalf of or aiding any person in negotiating or settling a claim relating to "extra-contractual damages unrelated to the damages under the policy, unfair claim practices violations, tort claims, or statutory interest, costs, and attorney's fees." However, a public adjuster is not prohibited from testifying or consulting with an attorney in pursuing claims for extra-contractual damages or unfair claims settlement practices.

The extra-contractual damages and unfair claims practices provision appears to refer to "bad faith" civil tort claims against insurance companies. Under the civil remedy provision of the

⁸ Section 624.155, F.S. See, discussion under Effect of Proposed Changes section, below.

Insurance Code (s. 624.155, F.S.), bad faith claims are for economic damages based upon an insurer's bad faith actions.⁹

The legislation requires public adjusters to ensure that contractors and other professionals used in formulating estimates or participating in the adjustment of a claim to be licensed by the Department of Business and Professional Regulation. Public adjusters are prohibited from restricting or preventing an insurer, company or independent adjuster, attorney, or any person acting on behalf of the insurer from having reasonable access to an insured, a claimant, or the insured property that is the subject of a claim.

Section 2. Provides for an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Third-party claimants could no longer be represented by public adjusters and insured could not be represented by such adjusters as to claims relating to bad faith claims, claims involving unfair claims practices violations, tort claims, statutory interest, costs, and attorney's fees. These insured and third-party claimants may have to resort to hiring an attorney or an accountant in order to settle such claims.

The bill would limit the authority of public adjusters and their potential income.

Insurance companies will benefit under the bill's provisions since they can obtain reasonable access to an insured or claimant or, to the insured's property.

⁹ Under that law, any person may bring a civil action against an insurer when that person is damaged by insurers violating certain provisions of the Insurance Code and by committing acts such as not attempting in good faith to settle claims when, under all circumstances, the insurer could and should have done so, had they acted fairly and honestly toward the insured and with due regard to his or her interests. Such acts also include making claim payments to insureds which are not accompanied by coverage statements or when insurers fail to promptly settle claims when the obligation to settle such claims is clear.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
