



738588

CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RCS	.	
3/11/2008	.	
	.	
	.	

1 The Committee on Banking and Insurance (Gaetz) recommended the
 2 following **amendment**:

3
 4 **Senate Amendment (with title amendment)**

5 Delete everything after the enacting clause
 6 and insert:

7
 8 Section 1. Subsection (5) of section 624.501, Florida
 9 Statutes, is amended, and subsection (29) is added to that
 10 section, to read:

11 624.501 Filing, license, appointment, and miscellaneous
 12 fees.--The department, commission, or office, as appropriate,
 13 shall collect in advance, and persons so served shall pay to it
 14 in advance, fees, licenses, and miscellaneous charges as
 15 follows:

Bill No. SB 1018



738588

16 (5) All insurance representatives and property insurance
17 appraisal umpires, application for license, each filing, filing
18 fee....\$50.00

19 (29) Property appraisal umpire original appointment,
20 biennial renewal, or continuation by the licensee....\$50.00

21 Section 2. Present subsections (16), (17), and (18) of
22 section 626.015, Florida Statutes, are renumbered as subsections
23 (18), (19), and (20), respectively, and new subsections (16) and
24 (17) are added to that section, to read:

25 626.015 Definitions.--As used in this part:

26 (16) "Property insurance loss appraiser" has the same
27 meaning as in s. 626.9933.

28 (17) "Property insurance appraisal umpire" has the same
29 meaning as in s. 626.9933.

30 Section 3. Subsection (1) of section 626.016, Florida
31 Statutes, is amended to read:

32 626.016 Powers and duties of department, commission, and
33 office.--

34 (1) The powers and duties of the Chief Financial Officer
35 and the department specified in this part apply only with
36 respect to insurance agents, insurance agencies, managing
37 general agents, insurance adjusters, reinsurance intermediaries,
38 viatical settlement brokers, customer representatives, service
39 representatives, and property insurance appraisal umpires
40 agencies.

41 Section 4. Subsection (1) of section 626.022, Florida
42 Statutes, is amended to read:

43 626.022 Scope of part.--

Bill No. SB 1018



738588

44 (1) This part applies ~~as~~ to insurance agents, service
45 representatives, adjusters, property insurance appraisal
46 umpires, and insurance agencies; ~~as~~ to any and all kinds of
47 insurance; and ~~as~~ to stock insurers, mutual insurers, reciprocal
48 insurers, and all other types of insurers, except that:

49 (a) It does not apply ~~as~~ to reinsurance, except that ss.
50 626.011-626.022, ss. 626.112-626.181, ss. 626.191-626.211, ss.
51 626.291-626.301, s. 626.331, ss. 626.342-626.521, ss. 626.541-
52 626.591, and ss. 626.601-626.711 shall apply ~~as~~ to reinsurance
53 intermediaries as defined in s. 626.7492.

54 (b) The applicability of this chapter ~~as~~ to fraternal
55 benefit societies shall be as provided in chapter 632.

56 (c) It does not apply to a bail bond agent, as defined in
57 s. 648.25, except as provided in chapter 648 or chapter 903.

58 (d) It ~~This part~~ does not apply to a certified public
59 accountant licensed under chapter 473 who is acting within the
60 scope of the practice of public accounting, as defined in s.
61 473.302, if ~~provided that~~ the activities of the certified public
62 accountant are limited to advising a client of the necessity of
63 obtaining insurance, the amount of insurance needed, or the line
64 of coverage needed, and if ~~provided that~~ the certified public
65 accountant does not directly or indirectly receive or share in
66 any commission or referral fee.

67 Section 5. Section 626.112, Florida Statutes, is amended
68 to read:

69 626.112 License and appointment required; agents, customer
70 representatives, adjusters, insurance agencies, service

Bill No. SB 1018



738588

71 representatives, managing general agents, and property insurance
72 appraisal umpires.--

73 (1) (a) No person may be, act as, or advertise or hold
74 himself or herself out to be an insurance agent, insurance
75 adjuster, or customer representative unless he or she is
76 currently licensed by the department and appointed by an
77 appropriate appointing entity or person.

78 (b) Except as provided in subsection (6) or in applicable
79 department rules, and in addition to other conduct described in
80 this chapter with respect to particular types of agents, a
81 license as an insurance agent, service representative, customer
82 representative, or limited customer representative is required
83 in order to engage in the solicitation of insurance. For
84 purposes of this requirement, as applicable to any of the
85 license types described in this section, the solicitation of
86 insurance is the attempt to persuade any person to purchase an
87 insurance product by:

88 1. Describing the benefits or terms of insurance coverage,
89 including premiums or rates of return;

90 2. Distributing an invitation to contract to prospective
91 purchasers;

92 3. Making general or specific recommendations as to
93 insurance products;

94 4. Completing orders or applications for insurance
95 products;

96 5. Comparing insurance products, advising as to insurance
97 matters, or interpreting policies or coverages; or

Bill No. SB 1018



738588

98 6. Offering or attempting to negotiate on behalf of
99 another person a viatical settlement contract as defined in s.
100 626.9911.

101
102 However, an employee leasing company licensed pursuant to
103 chapter 468 which is seeking to enter into a contract with an
104 employer that identifies products and services offered to
105 employees may deliver proposals for the purchase of employee
106 leasing services to prospective clients of the employee leasing
107 company setting forth the terms and conditions of doing
108 business; classify employees as permitted by s. 468.529; collect
109 information from prospective clients and other sources as
110 necessary to perform due diligence on the prospective client and
111 to prepare a proposal for services; provide and receive
112 enrollment forms, plans, and other documents; and discuss or
113 explain in general terms the conditions, limitations, options,
114 or exclusions of insurance benefit plans available to the client
115 or employees of the employee leasing company were the client to
116 contract with the employee leasing company. Any advertising
117 materials or other documents describing specific insurance
118 coverages must identify and be from a licensed insurer or its
119 licensed agent or a licensed and appointed agent employed by the
120 employee leasing company. The employee leasing company may not
121 advise or inform the prospective business client or individual
122 employees of specific coverage provisions, exclusions, or
123 limitations of particular plans. As to clients for which the
124 employee leasing company is providing services pursuant to s.
125 468.525(4), the employee leasing company may engage in



738588

126 activities permitted by ss. 626.7315, 626.7845, and 626.8305,
127 subject to the restrictions specified in those sections. If a
128 prospective client requests more specific information concerning
129 the insurance provided by the employee leasing company, the
130 employee leasing company must refer the prospective business
131 client to the insurer or its licensed agent or to a licensed and
132 appointed agent employed by the employee leasing company.

133 (2) No agent or customer representative shall solicit or
134 otherwise transact as agent or customer representative, or
135 represent or hold himself or herself out to be an agent or
136 customer representative as to, any kind or kinds of insurance
137 for as to which he or she is not ~~then~~ licensed and appointed.

138 (3) No person shall act as an adjuster as to any class of
139 business for which he or she is not ~~then~~ licensed and appointed.

140 (4) No person shall be, act as, or represent or hold
141 himself or herself out to be a service representative unless he
142 or she ~~then~~ holds a currently effective service representative
143 license and appointment. This subsection does not apply ~~as~~ to
144 similar representatives or employees of casualty insurers whose
145 duties are restricted to health insurance.

146 (5) No person shall be, act as, or represent or hold
147 himself or herself out to be a managing general agent unless he
148 or she ~~then~~ holds a currently effective managing general agent
149 license and appointment.

150 (6) An individual employed by a life or health insurer as
151 an officer or other salaried representative may solicit and
152 effect contracts of life insurance or annuities or of health
153 insurance, without being licensed as an agent, ~~when and~~ only if

Bill No. SB 1018



738588

154 ~~when~~ he or she is accompanied by and solicits for and on ~~the~~
155 behalf of a licensed and appointed agent.

156 (7) (a) ~~Effective October 1, 2006,~~ No individual, firm,
157 partnership, corporation, association, or any other entity shall
158 act in its own name or under a trade name, directly or
159 indirectly, as an insurance agency, unless it complies with s.
160 626.172 with respect to possessing an insurance agency license
161 for each place of business at which it engages in any activity
162 which may be performed only by a licensed insurance agent. Each
163 agency engaged in business in this state before January 1, 2003,
164 which is wholly owned by insurance agents currently licensed and
165 appointed under this chapter, each incorporated agency whose
166 voting shares are traded on a securities exchange, each agency
167 designated and subject to supervision and inspection as a branch
168 office under the rules of the National Association of Securities
169 Dealers, and each agency whose primary function is offering
170 insurance as a service or member benefit to members of a
171 nonprofit corporation may file an application for registration
172 in lieu of licensure in accordance with s. 626.172(3). ~~Each~~
173 ~~agency engaged in business before October 1, 2006, shall file an~~
174 ~~application for licensure or registration on or before October~~
175 ~~1, 2006.~~

176 1. If an agency is required to be licensed but fails to
177 file an application for licensure in accordance with this
178 section, the department shall impose on the agency an
179 administrative penalty in an amount of up to \$10,000.

180 2. If an agency is eligible for registration but fails to
181 file an application for registration or an application for

Bill No. SB 1018



738588

182 licensure in accordance with this section, the department shall
183 impose on the agency an administrative penalty in an amount of
184 up to \$5,000.

185 (b) A registered insurance agency shall, as a condition
186 precedent to continuing business, obtain an insurance agency
187 license if the department finds that, with respect to any
188 majority owner, partner, manager, director, officer, or other
189 person who manages or controls the agency, any person has:

190 1. Been found guilty of, or has pleaded guilty or nolo
191 contendere to, a felony in this state or any other state
192 relating to the business of insurance or to an insurance agency,
193 without regard to whether a judgment of conviction has been
194 entered by the court having jurisdiction of the cases.

195 2. Employed any individual in a managerial capacity or in
196 a capacity dealing with the public who is under an order of
197 revocation or suspension issued by the department. An insurance
198 agency may request, on forms prescribed by the department,
199 verification of any person's license status. If a request is
200 mailed within 5 working days after an employee is hired, and the
201 employee's license is currently suspended or revoked, the agency
202 shall not be required to obtain a license, if the unlicensed
203 person's employment is immediately terminated.

204 3. Operated the agency or permitted the agency to be
205 operated in violation of s. 626.747.

206 4. With such frequency as to have made the operation of
207 the agency hazardous to the insurance-buying public or other
208 persons:



738588

209 a. Solicited or handled controlled business. This
210 subparagraph shall not prohibit the licensing of any lending or
211 financing institution or creditor, with respect to insurance
212 only, under credit life or disability insurance policies of
213 borrowers from the institutions, which policies are subject to
214 part IX of chapter 627.

215 b. Misappropriated, converted, or unlawfully withheld
216 moneys belonging to insurers, insureds, beneficiaries, or others
217 and received in the conduct of business under the license.

218 c. Unlawfully rebated, attempted to unlawfully rebate, or
219 unlawfully divided or offered to divide commissions with
220 another.

221 d. Misrepresented any insurance policy or annuity
222 contract, or used deception with regard to any policy or
223 contract, done ~~either~~ in person or by any form of dissemination
224 of information or advertising.

225 e. Violated any provision of this code or any other law
226 applicable to the business of insurance in the course of dealing
227 under the license.

228 f. Violated any lawful order or rule of the department.

229 g. Failed or refused, upon demand, to pay over to any
230 insurer he or she represents or has represented any money coming
231 into his or her hands belonging to the insurer.

232 h. Violated the provision against twisting as defined in
233 s. 626.9541(1)(1).

234 i. In the conduct of business, engaged in unfair methods
235 of competition or in unfair or deceptive acts or practices, as
236 prohibited under part IX of this chapter.

Bill No. SB 1018



738588

237 j. Willfully overinsured any property insurance risk.

238 k. Engaged in fraudulent or dishonest practices in the
239 conduct of business arising out of activities related to
240 insurance or the insurance agency.

241 1. Demonstrated lack of fitness or trustworthiness to
242 engage in the business of insurance arising out of activities
243 related to insurance or the insurance agency.

244 m. Authorized or knowingly allowed individuals to transact
245 insurance who were not ~~then~~ licensed as required by this code.

246 5. Knowingly employed any person who within the preceding
247 3 years has had his or her relationship with an agency
248 terminated in accordance with paragraph (d).

249 6. Willfully circumvented the requirements or prohibitions
250 of this code.

251 (8) No insurance agent, insurance agency, or other person
252 licensed under the Insurance Code may pay any fee or other
253 consideration to an unlicensed person other than an insurance
254 agency for the referral of prospective purchasers to an
255 insurance agent which is in any way dependent upon whether the
256 referral results in the purchase of an insurance product.

257 (9) Any person who knowingly transacts insurance or
258 otherwise engages in insurance activities in this state without
259 a license in violation of this section commits a felony of the
260 third degree, punishable as provided in s. 775.082, s. 775.083,
261 or s. 775.084.

262 (10) Effective July 1, 2009, a person may not act as,
263 represent himself or herself as, or hold himself or herself out
264 to be a property insurance appraisal umpire unless he or she

Bill No. SB 1018



738588

265 holds a current property insurance appraisal umpire license
266 issued by the department.

267 Section 6. Part XII of chapter 626, Florida Statutes,
268 consisting of sections 626.9931, 626.9932, 626.9933, 626.9934,
269 626.9935, 626.9936, 626.9937, 626.9938, 626.9939, 626.9940,
270 626.9941, 626.9942, and 626.9943, is created to read:

271 626.9931 Purpose.--The Legislature finds that it is in the
272 interest of the public welfare to regulate property insurance
273 loss appraisers and property insurance appraisal umpires in this
274 state.

275 626.9932 Scope of part.--This part applies to residential
276 and commercial residential property insurance contracts that
277 contain an appraisal clause and to the umpires and appraisers
278 who participate in the appraisal process as a result of an
279 appraisal clause.

280 626.9933 Definitions.--As used in this part, the term:

281 (1) "Appraisal" means the process of estimating or
282 evaluating actual cash value, the amount of loss, or the cost of
283 repair or replacement of property for the purpose of quantifying
284 the monetary value of a property loss claim when an insurer and
285 an insured have failed to mutually agree on the value of the
286 loss pursuant to a residential or commercial residential
287 property insurance contract that provides for the resolution of
288 a claim dispute by appraisal.

289 (2) "Competent" means properly or sufficiently qualified
290 or capable to perform an appraisal.



291 (3) "Independent" means not subject to control,
292 restriction, modification, or limitation by the appointing
293 party.

294 (4) "Property insurance appraisal umpire" or "umpire"
295 means a competent, independent, and impartial third party
296 selected by the appraisers for the insurer and the insured to
297 resolve issues for which the appraisers are unable to reach an
298 agreement in the course of the appraisal process pursuant to a
299 residential or commercial residential property insurance
300 contract that provides for the resolution of a claim dispute by
301 appraisal.

302 (5) "Property insurance loss appraiser" or "appraiser"
303 mean a competent and independent third party selected by an
304 insurer or an insured to develop an appraisal for purposes of
305 the appraisal process under a residential or commercial
306 residential property insurance contract that provides for the
307 resolution of a claim dispute by appraisal.

308 626.9934 Appraisal umpire application; fingerprinting
309 required; umpire list.--

310 (1) Application for a license under this part shall be
311 made as provided in s. 626.171 and related sections of this
312 code.

313 (2) At the time of application, the applicant must be
314 fingerprinted by a law enforcement agency or other entity
315 approved by the department and must pay the fingerprint
316 processing fee specified in s. 624.501. Fingerprints must be
317 processed in accordance with s. 624.34.

Bill No. SB 1018



738588

318 (3) The department shall develop and maintain as a public
319 record a current list of licensed property insurance appraisal
320 umpires.

321 626.9935 Rulemaking authority.--The department may adopt
322 rules to administer the requirements of this part pursuant to
323 ss. 120.536(1) and 120.54.

324 626.9936 Qualifications for licensure as a property
325 insurance appraisal umpire.--

326 (1) The department may not issue a license as a property
327 insurance appraisal umpire to any individual found by it to be
328 untrustworthy or incompetent, or who has not met the following
329 qualifications:

330 (a) The applicant has filed an application with the
331 department in accordance with s. 626.171;

332 (b) The applicant is a natural person who is at least 18
333 years of age;

334 (c) The applicant is a United States citizen or legal
335 alien who possesses work authorization from the United States
336 Bureau of Citizenship and Immigration Services; and

337 (d) The applicant has completed the education, experience,
338 or licensing requirements in s. 626.9937.

339 (2) An incomplete application expires 6 months after the
340 date it is received.

341 (3) An applicant seeking to become licensed under this
342 part may not be rejected solely by virtue of membership or lack
343 of membership in any particular appraisal organization.

344 626.9937 Professional or educational requirements for
345 insurance appraisal umpires applicants.--The department may not



738588

346 issue a license to an applicant for licensure as a property
347 insurance appraisal umpire unless the applicant meets one of the
348 following requirements:

349 (1) The applicant is currently licensed, registered,
350 certified, or approved as an engineer as defined in s. 471.005,
351 or as a retired professional engineer as defined in s. 471.005
352 and has taught or successfully completed 4 hours of classroom
353 coursework, approved by the department, specifically related to
354 construction, building codes, appraisal procedure, appraisal
355 preparation, and any other related material deemed appropriate
356 by the department.

357 (2) The applicant is currently or, within the 5 years
358 immediately preceding the date on which the application is filed
359 with the department, has been licensed, registered, certified,
360 or approved as a general contractor, building contractor, or
361 residential contractor as defined in s. 489.105 and has taught
362 or successfully completed 4 hours of classroom coursework,
363 approved by the department, specifically related to
364 construction, building codes, appraisal procedure, appraisal
365 preparation, and any other related material deemed appropriate
366 by the department.

367 (3) The applicant is currently or, within the 5 years
368 immediately preceding the date on which the application is filed
369 with the department, has been licensed or registered as an
370 architect to engage in the practice of architecture pursuant to
371 part I of chapter 481 and has taught or successfully completed 4
372 hours of classroom coursework, approved by the department,
373 specifically related to construction, building codes, appraisal

Bill No. SB 1018



738588

374 procedure, appraisal preparation, and any other related material
375 deemed appropriate by the department.

376 (4) The applicant is currently or, within the 5 years
377 immediately preceding the date on which the application is filed
378 with the department, has been a qualified geologist or
379 professional geologist as defined in s. 492.102 and has taught
380 or successfully completed 4 hours of classroom coursework,
381 approved by the department, specifically related to
382 construction, building codes, appraisal procedure, appraisal
383 preparation, and any other related material deemed appropriate
384 by the department.

385 (5) The applicant is currently or, within the 5 years
386 immediately preceding the date on which the application is filed
387 with the department, has been licensed as a certified public
388 accountant as defined in s. 473.302 and has taught or
389 successfully completed 4 hours of classroom coursework, approved
390 by the department, specifically related to construction,
391 building codes, appraisal procedure, appraisal preparation, and
392 any other related material deemed appropriate by the department.

393 (6) The applicant is currently or, within the 5 years
394 immediately preceding the date on which the application is filed
395 with the department, has been licensed as an attorney at law in
396 this state and has taught or successfully completed 4 hours of
397 classroom coursework, approved by the department, specifically
398 related to construction, building codes, appraisal procedure,
399 appraisal preparation, and any other related material deemed
400 appropriate by the department.

Bill No. SB 1018



738588

401 (7) The applicant has received a baccalaureate degree from
402 an accredited 4-year college in the field of engineering,
403 architecture, or building construction and has taught or
404 successfully completed 4 hours of classroom coursework, approved
405 by the department, specifically related to construction,
406 building codes, appraisal procedure, appraisal preparation, and
407 any other related material deemed appropriate by the department.

408 (8) The applicant is currently licensed as an all-lines or
409 property and casualty adjuster pursuant to part VI and:

410 (a) Has 1 year of proven experience as an employee of a
411 general contractor, building contractor, or residential
412 contractor;

413 (b) Has received a minimum of 8 semester hours or 12
414 quarter hours of credit from an accredited college in the field
415 of accounting, geology, engineering, architecture, or building
416 construction;

417 (c) Has taught or successfully completed 4 hours of
418 classroom coursework, approved by the department, specifically
419 related to construction, building codes, appraisal procedure,
420 appraisal preparation, and any other related material deemed
421 appropriate by the department; or

422 (d) Has acted as an appraiser or umpire in a minimum of 20
423 appraisal proceedings under a property insurance contract.

424 (9) The applicant has successfully completed 40 hours of
425 classroom coursework, approved by the department, specifically
426 related to construction, building codes, appraisal procedure,
427 appraisal preparation, property insurance, and any other related
428 material deemed appropriate by the department.



429 626.9938 Regulation of umpire course providers,
430 instructors, and courses.--

431 (1) Each umpire course provider, instructor, and classroom
432 course must be approved by and registered with the department
433 before prelicensure courses for property insurance appraisal
434 umpires may be offered. Each classroom course must include a
435 written examination at the conclusion of the course and must
436 cover all of the material contained in the course. A student may
437 not receive credit for the course unless the student achieves a
438 grade of at least 75 on the examination.

439 (2) The department shall adopt rules establishing:

440 (a) Standards for the approval, registration, discipline,
441 or removal from registration of course providers, instructors,
442 and courses. The standards must be designed to ensure that
443 instructors have the knowledge, competence, and integrity to
444 fulfill the educational objectives of the prelicensure
445 requirements of this part.

446 (b) A process for determining compliance with the
447 prelicensure requirements of this part. The department shall
448 adopt rules prescribing the forms necessary to administer the
449 prelicensure requirements of this part.

450 (3) Approval to teach prescribed or approved appraisal
451 courses does not entitle the instructor to teach any courses
452 outside the scope of this part.

453 626.9939 Grounds for compulsory refusal, suspension, or
454 revocation of an umpire's license.--In addition to the grounds
455 set forth in s. 626.611, the department shall deny an
456 application for, and suspend, revoke, or refuse to renew or

Bill No. SB 1018



738588

457 continue, a license as a property insurance appraisal umpire if
458 the applicant or licensee has:

459 (1) Violated a duty imposed upon her or him by law or by
460 the terms of a contract, whether written, oral, express, or
461 implied, in an appraisal; has aided, assisted, or conspired with
462 any other person engaged in any such misconduct and in
463 furtherance thereof; or has formed an intent, design, or scheme
464 to engage in such misconduct and committed an overt act in
465 furtherance of such intent, design, or scheme. It is immaterial
466 to a finding that a licensee has committed a violation of this
467 subsection that the victim or intended victim of the misconduct
468 has sustained no damage or loss, that the damage or loss has
469 been settled and paid after the discovery of misconduct, or that
470 such victim or intended victim was a customer or a person in a
471 confidential relation with the licensee or was an identified
472 member of the general public.

473 (2) Violated any provision of this part or any lawful
474 order or rule of the department.

475 (3) Had a registration, license, or certification as an
476 appraiser revoked, suspended, or otherwise acted against; has
477 had his or her registration, license, or certificate to practice
478 or conduct any regulated profession, business, or vocation
479 revoked or suspended by this or any other state, any nation, or
480 any possession or district of the United States; or has had an
481 application for such registration, licensure, or certification
482 to practice or conduct any regulated profession, business, or
483 vocation denied by this or any other state, any nation, or any
484 possession or district of the United States.

Bill No. SB 1018



738588

485 (4) Made or filed a report or record, written or oral,
486 which the licensee knows to be false; has willfully failed to
487 file a report or record required by state or federal law; has
488 willfully impeded or obstructed such filing; or has induced
489 another person to impede or obstruct such filing.

490 (5) Accepted an appointment as an umpire if the
491 appointment is contingent upon the umpire reporting a
492 predetermined result, analysis, or opinion, or if the fee to be
493 paid for the services of the umpire is contingent upon the
494 opinion, conclusion, or valuation reached by the umpire.

495 626.9940 Grounds for discretionary denial, suspension, or
496 revocation of a license as a property insurance appraisal
497 umpire.--In addition to the applicable grounds set forth in s.
498 626.621, the department may deny an application for and suspend,
499 revoke, or refuse to renew or continue a license as a property
500 insurance appraisal umpire if the applicant or licensee has:

501 (1) Failed to timely communicate with the appraisers
502 without good cause.

503 (2) Failed or refused to exercise reasonable diligence in
504 submitting recommendations to the appraisers.

505 (3) Violated any ethical standard for property insurance
506 appraisal umpires set forth in s. 626.9941.

507 (4) Failed to inform the department in writing within 30
508 days after pleading guilty or nolo contendere to, or being
509 convicted or found guilty of, any felony.

510 (5) Failed to timely notify the department of any change
511 in business location, or has failed to fully disclose all



512 business locations from which he or she operates as a property
513 insurance appraisal umpire.

514 626.9941 Ethical standards for property insurance
515 appraisal umpires.--

516 (1) IMPARTIALITY.--An umpire shall be neutral and maintain
517 impartiality throughout the appraisal process. Impartiality
518 means freedom from favoritism or bias in word, action, or
519 appearance. An umpire shall withdraw from appraisal if the
520 umpire is no longer impartial.

521 (2) GIFTS AND SOLICITATION.--An umpire may not give or
522 accept any gift, favor, loan, or other item of value in an
523 appraisal process. During the appraisal process, an umpire may
524 not solicit or otherwise attempt to procure future professional
525 services.

526 (3) CONFLICTS OF INTEREST.--An umpire may not participate
527 in a matter that presents a clear or undisclosed conflict of
528 interest. A conflict of interest arises when any relationship
529 between the umpire and the appraisal participants or the subject
530 matter of the dispute compromises, or appears to compromise, the
531 umpire's impartiality.

532 (4) BURDEN OF DISCLOSURE.--The burden of disclosing a
533 potential conflict of interest rests on the umpire. Disclosure
534 must be made as soon as practical after the umpire becomes aware
535 of the interest or relationship giving rise to the potential
536 conflict of interest.

537 (5) EFFECT OF DISCLOSURE.--After appropriate disclosure,
538 the umpire may serve if all parties agree. However, if a
539 conflict of interest clearly impairs an umpire's impartiality,



540 the umpire shall withdraw regardless of the express agreement of
541 the parties.

542 (6) CONFIDENTIALITY.--An umpire shall maintain
543 confidentiality of all information revealed during an appraisal
544 except where disclosure is required by law.

545 (7) RECORDKEEPING.--An umpire shall maintain
546 confidentiality in the storage and disposal of records and may
547 not disclose any identifying information when materials are used
548 for research, training, or statistical compilations.

549 (8) FEES AND EXPENSES.--An umpire holds a position of
550 trust. Fees charged for appraisal services shall be reasonable
551 and consistent with the nature of the case. An umpire shall be
552 guided by the following general principles in determining fees:

553 (a) Any charges for services as an umpire based on time
554 may not exceed actual time spent or allocated;

555 (b) Charges for costs shall be for those actually
556 incurred; and

557 (c) An umpire may not charge, agree to, or accept as
558 compensation or reimbursement any payment, commission, or fee
559 that is based on a percentage basis, or that is contingent upon
560 arriving at a particular value or any future happening or
561 outcome of the assignment.

562 (9) MAINTENANCE OF RECORDS.--An umpire shall maintain
563 records necessary to support charges for services and expenses,
564 and upon request shall provide an accounting of all applicable
565 charges to the parties.

566 (10) ADVERTISING.--An umpire may not engage in marketing
567 practices that contain false or misleading information. An

Bill No. SB 1018



738588

568 umpire shall ensure that any advertisements of the umpire's
569 qualifications, services to be rendered, or the appraisal
570 process are accurate and honest. An umpire may not make claims
571 of achieving specific outcomes or promises implying favoritism
572 for the purpose of obtaining business.

573 (11) INTEGRITY AND IMPARTIALITY.--An umpire may not accept
574 any engagement, provide any service, or perform any act that
575 would compromise the umpire's integrity or impartiality.

576 (12) SKILL AND EXPERIENCE.--An umpire shall decline an
577 appointment or selection, withdraw, or request appropriate
578 assistance when the facts and circumstances of the appraisal are
579 beyond the umpire's skill or experience.

580 626.9942 Retention of records.--An umpire licensed under
581 this part shall retain for at least 5 years original or true
582 copies of any contracts engaging the umpire's services,
583 appraisal reports, and supporting data assembled and formulated
584 by the umpire in preparing appraisal reports. The period for
585 retaining the records applicable to each engagement starts on
586 the date of the submission of the appraisal report to the
587 client. These records must be made available by the umpire for
588 inspection and copying by the department upon reasonable notice
589 to the umpire. If an appraisal has been the subject of, or has
590 been admitted as evidence in, a lawsuit, reports and records
591 must be retained for at least 2 years after the date the trial
592 ends.

593 626.9943 Ethical standards for property insurance loss
594 appraisers.--

595 (1) INTEGRITY AND IMPARTIALITY.--

Bill No. SB 1018



738588

596 (a) An appraiser may not accept an appointment unless he
597 or she can serve impartially; can serve independently from the
598 party appointing him or her; is competent to serve; and is
599 available to promptly commence the appraisal, and thereafter
600 devote the time and attention for its completion that the
601 parties are reasonably entitled to expect.

602 (b) An appraiser shall conduct the appraisal process in a
603 manner that advances the fair and efficient resolution of the
604 matters submitted for decision. An appraiser shall make all
605 reasonable efforts to prevent delays in the appraisal process,
606 the harassment of parties or other participants, or other abuse
607 or disruption of the appraisal process.

608 (c) Once an appraiser has accepted an appointment, the
609 appraiser may not withdraw or abandon the appointment unless
610 compelled to do so by unanticipated circumstances that would
611 render it impossible or impracticable to continue.

612 (d) The appraiser shall, after careful deliberation,
613 decide all issues submitted for determination and no other
614 issues. An appraiser shall decide all matters justly, exercising
615 independent judgment, and may not allow outside pressure to
616 affect the decision. An appraiser may not delegate the duty to
617 decide to any other person.

618 (2) COMMUNICATIONS WITH PARTIES.--

619 (a) If an agreement of the parties establishes the manner
620 or content of the communications between the appraisers and the
621 parties, the appraiser shall abide by such agreement. In the
622 absence of agreement, an appraiser may not discuss a proceeding

Bill No. SB 1018



738588

623 with any party in the absence of any other party, except in the
624 following circumstances:

625 1. If the appointment of the appraiser is being
626 considered, the prospective appraiser may ask about the
627 identities of the parties, counsel, and the general nature of
628 the case, and may respond to inquiries from a party or its
629 counsel designed to determine his or her suitability and
630 availability for the appointment;

631 2. To consult with the party who appointed the appraiser
632 concerning the selection of a neutral umpire;

633 3. To make arrangements for any compensation to be paid by
634 the party who appointed the appraiser; or

635 4. To make arrangements for obtaining materials and
636 inspection of the property with the party who appointed the
637 appraiser. Such communication is limited to scheduling and the
638 exchange of materials.

639 (b) There may be no communications whereby a party
640 dictates to an appraiser what the result of the proceedings must
641 be, what matters or elements may be included or considered by
642 the appraiser, or what actions the appraiser may take.

643 (3) GIFTS AND SOLICITATION.--An appraiser may not give or
644 accept any gift, favor, loan, or other item of value in an
645 appraisal process. During the appraisal process, an appraiser
646 may not solicit or otherwise attempt to procure future
647 professional services.

648 (4) CONFLICTS OF INTEREST.--An appraiser may not
649 participate in a matter that presents a clear or undisclosed
650 conflict of interest. A conflict of interest arises when any



738588

651 known existing or past financial, business, professional, or
652 personal relationship between the appraiser and the appraisal
653 participants or the subject matter of the dispute might
654 reasonably affect impartiality or lack of independence in the
655 eyes of any of the parties.

656 (5) BURDEN OF DISCLOSURE.--The burden of disclosing any
657 potential conflict of interest rests on the appraiser.
658 Disclosure must be made before accepting an appointment, or, if
659 the conflict of interest arises after accepting an appointment,
660 disclosure must be made as soon as practical after the appraiser
661 becomes aware of the interest or relationship giving rise to the
662 potential conflict of interest.

663 (6) EFFECT OF DISCLOSURE.--After appropriate disclosure,
664 the appraiser may serve if all parties agree. However, if an
665 appraiser is requested to withdraw by all parties, he or she
666 must withdraw. If an appraiser is requested to withdraw due to
667 alleged partiality, the appraiser must withdraw. If the
668 appraiser refuses to withdraw, a party may challenge the
669 appraiser's partiality by filing a petition with a county or
670 circuit court in the jurisdiction in which the covered property
671 is located.

672 (7) FEES AND EXPENSES.--An appraiser holds a position of
673 trust. Fees charged for appraisal services shall be reasonable
674 and consistent with the nature of the case. An appraiser shall
675 be guided by the following general principles in determining
676 fees:

677 (a) Any charges for services as an appraiser based on time
678 may not exceed the actual time spent or allocated; and

Bill No. SB 1018



738588

679 (b) Charges for costs shall be only for those costs
680 actually incurred.

681 (8) MAINTENANCE OF RECORDS.--An appraiser shall maintain
682 records to support charges for services, fees, and expenses, and
683 upon request shall provide an accounting of all applicable
684 charges to the parties.

685 (9) ADVERTISING.--An appraiser may not engage in marketing
686 practices that contain false or misleading information. An
687 appraiser shall ensure that any advertisements of the
688 appraiser's qualifications, services to be rendered, or the
689 appraisal process are accurate and honest. An appraiser may not
690 make claims of achieving specific outcomes or promises implying
691 favoritism for the purpose of obtaining business.

692 (10) SKILL AND EXPERIENCE.--An appraiser shall decline an
693 appointment or selection, withdraw, or request appropriate
694 assistance when the facts and circumstances of the appraisal are
695 beyond the appraiser's skill or experience.

696 Section 7. Section 627.4141, Florida Statutes, is created
697 to read:

698 627.4141 Residential or commercial property insurance loss
699 appraisal.--If a residential or commercial residential property
700 insurance contract provides that either party may submit a
701 written demand to enter into the process of appraisal if the
702 insured and the insurer fail to mutually agree as to the actual
703 cash value, the amount of loss, or the cost of repair or
704 replacement of property for which a claim has been filed, that
705 process shall be governed by this section. The insurer may
706 refuse to accept the demand only if the insured materially fails

Bill No. SB 1018



738588

707 to comply with the proof-of -loss obligations of the insured as
708 set forth in the policy conditions. The insurer is deemed to
709 have waived its right to demand an appraisal if it fails to
710 invoke an appraisal within 30 days after the insured
711 substantially complies with the proof-of-loss obligation as set
712 forth in the policy conditions.

713 (1) Each party shall select a competent and independent
714 appraiser and notify the other party of the appraiser selected
715 within 20 days after the date of the demand for an appraisal.
716 The appraisers shall select a competent, independent, and
717 impartial umpire who is on the department's list of licensed
718 property insurance appraisal umpires. If the appraisers are
719 unable to agree on an umpire within 15 days, the insured or the
720 insurer may file a petition with a county or circuit court in
721 the jurisdiction in which the covered property is located to
722 designate a licensed property insurance appraisal umpire for the
723 appraisal.

724 (2) Appraisal proceedings are informal unless the insured
725 and the insurer mutually agree otherwise. For purposes of this
726 section, "informal" means that no formal discovery shall be
727 conducted, including depositions, interrogatories, requests for
728 admission, or other forms of formal civil discovery; no formal
729 rules of evidence shall be applied; and no court reporter shall
730 be used for the proceedings.

731 (3) Each appraiser shall appraise the loss and submit a
732 written report to the other appraiser, separately stating the
733 cost of the loss, the actual cash value, or the cost to repair
734 or replace each item. The appraisers shall attempt to resolve

Bill No. SB 1018



738588

735 any differences in their appraisals and reach a mutual agreement
736 on all matters. If the appraisers are unable to agree, they
737 shall submit the differences in their findings to the umpire.

738 (4) The umpire shall review any differences in appraisals
739 submitted by the appraisers and determine the amount of the loss
740 for each item submitted. Within 10 days after receipt of any
741 differences in appraisals, the umpire shall submit the umpire's
742 conclusions in writing to each appraiser.

743 (5) If either appraiser agrees with the conclusions of the
744 umpire, an itemized written appraisal award signed by the umpire
745 and the appraiser shall be filed with the insurer and shall
746 determine the amount of the loss.

747 (6) The appraisal award is binding on the insurer and the
748 insured with regard to the amount of the loss. If the insurance
749 policy so provides, the insurer may assert that there is no
750 coverage under the policy for the loss as a whole or that there
751 has been a violation of the policy conditions with respect to
752 fraud, lack of notice, or failure to cooperate.

753 (7) Each appraiser shall be paid by the party who selects
754 the appraiser and the expenses of the appraisal and fees of the
755 umpire shall be paid by the parties equally, except that if the
756 final determination of the amount of the loss exceeds 50 percent
757 of the insurer's original appraisal, the insurer shall pay all
758 of the expenses, including any fees and expenses charged by the
759 insured's appraiser and all fees and expenses of the umpire.
760 This subsection does not affect an insured's claim for
761 attorney's fees under s. 627.428.



738588

762 (8) The provisions of the Florida Arbitration Code do not
763 apply to residential and commercial residential property
764 insurance loss appraisal proceedings.

765 (9) The appraisal process may not address issues involving
766 whether or not the loss or damage is covered under the terms of
767 the insurance contract. However, the appraisers and the umpire
768 may consider causation issues, if necessary, to determine the
769 amount of loss.

770 Section 8. This act shall take effect July 1, 2008.

771
772 ===== T I T L E A M E N D M E N T =====

773 And the title is amended as follows:

774 Delete everything before the enacting clause
775 and insert:

776 A bill to be entitled
777 An act relating to property insurance appraisal umpires;
778 amending s. 624.501, F.S.; providing license application,
779 issuance, biennial renewal, or continuation fees for
780 property appraisal umpires; amending s. 626.015, F.S.;
781 defining the terms "property insurance loss appraiser" and
782 "property insurance appraisal umpire" for purposes of the
783 Licensing Procedures Law; amending s. 626.016, F.S.;
784 providing that property insurance appraisal umpires are
785 subject to the powers of the Department of Financial
786 Services, the Financial Services Commission, and the
787 Office of Insurance Regulation; amending s. 626.022, F.S.;
788 expanding the scope of part I of ch. 626, F.S., to include
789 property insurance appraisal umpires; deleting obsolete

Bill No. SB 1018



738588

790 provisions; amending s. 626.112, F.S.; requiring that
791 property insurance appraisal umpires operating in this
792 state be licensed by the department; creating part XII of
793 ch. 626, F.S.; creating s. 626.9931, F.S.; providing a
794 legislative finding and purpose; creating s. 626.9932,
795 F.S.; providing the scope and parameters for application;
796 creating s. 626.9933, F.S.; providing definitions;
797 creating s. 626.9934, F.S.; providing procedures for the
798 application for licensure as a property insurance
799 appraisal umpire; requiring that all applicants be
800 fingerprinted by a law enforcement agency or other entity
801 approved by the department at the time of application;
802 requiring the department to develop and maintain an
803 updated list of licensed umpires; creating s. 626.9935,
804 F.S.; authorizing the department to adopt rules; creating
805 s. 626.9936, F.S.; providing qualifications for licensure
806 as a property insurance appraisal umpire; creating s.
807 626.9937, F.S.; providing professional and educational
808 requirements for licensure as a property insurance
809 appraisal umpire; creating s. 626.9938, F.S.; providing
810 for the regulation of umpire course providers,
811 instructors, and courses; requiring the department to
812 adopt rules establishing standards for providers,
813 instructors, and courses, and a process for determining
814 compliance with certain prelicensure requirements and
815 adopting forms to be used for the administration of such
816 requirements; creating s. 626.9939, F.S.; providing
817 grounds for the compulsory refusal, suspension, or

Bill No. SB 1018



738588

818 revocation of an umpire's license; creating s. 626.9940,
819 F.S.; providing grounds for the discretionary refusal,
820 suspension, or revocation of an umpire's license; creating
821 s. 626.9941, F.S.; providing ethical standards for
822 property insurance loss appraisal umpires; creating s.
823 626.9942, F.S.; requiring that a licensed property
824 insurance appraisal umpire retain certain records for a
825 specified period; requiring that umpires make such records
826 available for inspection and copying by the department;
827 requiring that appraisals that are the subject of
828 litigation or have been admitted as evidence in a lawsuit
829 be retained for a specified period; creating s. 626.9943,
830 F.S.; providing ethical standards for property loss
831 insurance appraisers; creating s. 627.4141, F.S.;
832 providing procedures that must be followed if a
833 residential or commercial property insurance contract
834 provides that either party may submit a written demand to
835 enter into the process of appraisal when the insured and
836 the insurer fail to mutually agree to the actual cash
837 value, the amount of loss, or the cost of repair or
838 replacement of property for which a claim has been filed;
839 providing an exception upon which an insurer may refuse to
840 accept such demand; authorizing each party to select a
841 competent and independent appraiser and to notify the
842 opposing party within a specified period; requiring the
843 appraisers to select an umpire from the department's list
844 of licensed umpires; authorizing either party to file a
845 petition, in a county or circuit court in the jurisdiction

Bill No. SB 1018



738588

846 in which the covered property is located, to designate an
847 umpire if the appraisers cannot agree on the selection of
848 an umpire; providing that appraisal proceedings are
849 informal unless the insurer and the insured agree
850 otherwise; defining and providing the scope of the term
851 "informal" for purposes of appraisal proceedings;
852 requiring each appraiser to submit a written report to the
853 other appraisers; requiring that any differences in
854 findings among the appraisers which cannot be resolved by
855 the appraisers themselves be submitted to the umpire for
856 review; requiring the umpire to submit his or her
857 conclusions regarding any unresolved differences in the
858 findings of the appraisers within a specified period;
859 providing that if either appraiser agrees with the
860 conclusions of the umpire, an itemized written appraisal
861 award signed by the umpire and appraiser shall be filed
862 with the insurer and shall determine the amount of the
863 loss; providing that the appraisal award is binding upon
864 the insurer and the insured; providing for compensation of
865 the appraisers and the umpire; providing that the Florida
866 Arbitration Code does not apply to residential or
867 commercial property insurance loss appraisal proceedings;
868 prohibiting the appraisal process from addressing issues
869 involving coverage or lack thereof under an insurance
870 contract; authorizing the umpire and appraisers to
871 consider causation issues when necessary to determine the
872 amount of loss; providing an effective date.