

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 Regulated Industries

BILL: SB 336

INTRODUCER: Senator Richter

SUBJECT: Property Insurance Appraisals

DATE: January 28, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Caldwell	RI	Pre-meeting
2.			BI	
3.			AP	

I. Summary:

SB 336 provides for the licensing and regulation of property insurance appraisers and umpires by the Department of Financial Services. Property insurance contracts often contain “appraisal” provisions. Appraisal provisions are used when the parties agree that there is a covered loss but disagree as to the amount of the loss. Such provisions typically provide that each party select an appraiser. The two appraisers jointly select an umpire. The two appraisers submit a report to the insurer. If the appraisers agree as to the amount of the loss, the insurer pays the claim. If they do not agree, the umpire resolves the dispute. Current law does not limit or restrict who may act as an umpire and does not provide a method for either party to challenge whether an umpire is fair and impartial.

The bill provides the education and experience qualifications to be an appraiser and an appraisal umpire. The bill provides fees, including a nonrefundable \$50 application fee, a \$5 initial license fee, and a \$60 biennial renewal and appointment fee. The fees for appraisers and appraisal umpires are identical. The bill provides continuing education requirements, and provides grounds for the discipline of a license, and ethical standards for appraisers and appraisal umpires.

II. Present Situation:

Property Insurance Appraisers and Umpires

Property insurance contracts often contain “appraisal” provisions. Appraisal provisions are used when the parties agree that there is a covered loss but disagree as to the amount of the loss.¹ Such provisions typically provide that each party select an appraiser. The two appraisers jointly select an umpire. The two appraisers submit a report to the insurer. If the appraisers agree as to the

¹ See Fla.Jur. Insurance §3292.

amount of the loss, the insurer pays the claim. If they do not agree, the umpire resolves the dispute.² Current law does not limit or restrict who may act as an umpire and does not provide a method for either party to challenge whether an umpire is fair and impartial.

Public Adjusters

A public adjuster is a person, other than a licensed attorney, who, for compensation, prepares or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of the insured or third party.³ The responsibilities of property insurance public adjusters include inspecting the loss site, analyzing damages, assembling claim support data, reviewing the insured's coverage, determining current replacement costs, and conferring with the insurer's representatives to adjust the claim. Public adjusters are licensed by the Department of Financial Services (department) and must meet specified age, residency, examination, and surety bond requirements.⁴ The conduct of a public adjuster is governed by statute and by rule.⁵ A company employee adjuster (known as a "company adjuster") performs the same services as a public adjuster except he or she is employed by the insurer.⁶

The Sunrise Act

Florida does not license or regulate property insurance appraisal umpires and property insurance appraisers.

A proposal for new regulation of a profession must meet the requirements in s. 11.62, F.S., the Sunrise Act. The act prohibits:

- Subjecting a profession or occupation to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage; or
- Regulating a profession or occupation by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.

In determining whether to regulate a profession or occupation, s. 11.62, F.S., requires the Legislature to consider the following:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;

² *Citizens Property Insurance Corporation v. Mango Hill Condominium Association 12 Inc.*, 54 So.3d 578 (Fla.3d DCA 2011) and *Intracoastal Ventures Corp. v. Safeco Ins. Co. of America*, 540 So.2d 162 (Fla. 3d DCA 1989), contain examples of appraisal provisions.

³ Section 626.854(1), F.S.

⁴ Section 626.865, F.S.

⁵ *See generally*, ss. 626.854, 626.8698, 626.876, 626.878, 626.8795, and 626.8796, F.S., and Rule 69B-220, F.A.C.

⁶ Section 626.856, F.S.

- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice, or who are practicing, a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

Section 11.62, F.S., requires the proponents of regulation to submit information, which is structured as a sunrise questionnaire to document that the regulation meets these criteria. A response to a sunrise questionnaire was prepared by the proponents of the legislation to assist the Legislature in determining the need for regulation.

The response submitted by the proponents of the bill, the Insurance Appraisers and Umpires Association (IAUA),⁷ states that the unregulated profession poses a substantial harm to the public health, safety, or welfare. In pertinent part, the response provides:

Currently, the state licenses adjusters in three categories, company adjuster, independent adjuster and public adjuster, if an individual is unable to pass these tests, or if they lose their license, they are able to become an insurance property appraisers and/or an insurance property umpire with no regulation. Further, convicted felons are able to become insurance property appraisers and/or insurance property umpires.

The Courts have ruled that a decision of the insurance appraisal panel (any 2 of the 3 members of the panel) is binding on the parties unless fraud is involved, (appraisals are for the dollar amount of the insurance loss and the panels are not empowered to determine coverage).

In the past, the public has been harmed when roofers, contractors and non-insurance people are involved and they don't properly appraise the amount of damages, for example, roofers have been known to appraise the roof of a home only without considering the interior of a home thus injuring the public in that they don't receive the proper insurance funds for the interior of their home and thus they fail to repair the interior making the damages worse and affecting the value of the home.

III. Effect of Proposed Changes:

The bill creates part XIV of ch. 626, F.S., to provide for the regulation of property insurance appraisal umpires (appraisal umpires) and property insurance appraisers (appraisers).

⁷ More information about the Insurance Appraisers and Umpires Association is available at: <http://www.iaua.us/about-iaua.aspx> (last visited March 13, 2015).

Property Insurance Appraisal Umpire Licensing Program

The bill creates s. 626.9961, F.S., to create the property insurance appraisal umpire and appraiser licensing program within the department. It provides that part XIV of ch. 626, F.S., applies to residential and commercial residential property insurance contracts and to the umpires and appraisers who participate in the appraisal process. It also authorizes the department to adopt rules to administer part XIV of ch. 626, F.S.

Definitions

The bill creates s. 626.9962, F.S., to define the terms “appraisal,” “competent,” “department,” “independent,” “property insurance appraisal umpire,” “umpire,” “property insurance appraiser,” and “appraiser.”

The bill defines the term “appraisal” to mean:

the process of dispute resolution, as defined in the property insurance contract, which determines the amount of loss when the insurer and insured are unable to agree on the amount of the loss, or, if the insurer has elected to repair the property and the insurer and the insured are unable to agree on the scope of repairs, the scope of repairs. Appraisal occurs after coverage is established.

The bill defines the terms “property insurance appraisal umpire” or “umpire” to mean:

a third party selected by appraisers representing the insurer and the insured who is charged with resolving issues that the appraisers are unable to agree upon during the course of an appraisal process conducted pursuant to a residential, commercial residential, or commercial property insurance contract that provides for resolution of claim disputes by appraisal.

The bill defines the terms “property insurance appraiser” or “appraiser” to mean a:

a third party selected by an insurer or an insured to develop an appraisal under a residential, commercial residential, or commercial property insurance contract that provides for resolution of claim disputes by appraisal.

Fees

The bill creates s. 626.9963, F.S., to delineate the following maximum fees for an appraiser appraisal umpires:

- Application: \$50 (nonrefundable);
- Initial license: \$5;
- Biennial appointment and appointment renewal: \$60; and
- Continuing education provider designation: \$100 per course.

The bill does not provide a maximum amount for the examination fee. The bill provides that the fee must be sufficient to cover the actual cost of the examination and reexamination.

The bill requires that fees must be deposited in the Insurance Regulatory Trust Fund.

License Application Process and Qualifications

The bill creates s. 626.9964, F.S., to provide the application process for an appraiser or appraisal umpire license. An applicant must submit a written application under oath. The bill sets forth the personal identifying information that must be included in the application along with the application fee. The applicant must also be fingerprinted, and the fingerprints must be submitted by the department to the Florida Department of Law Enforcement for a state and federal criminal history records check.

The bill requires that the department develop and maintain as a public record a current list of licensed property insurance appraisers and appraisal umpires.

Section 626.9964(6), F.S., provides the qualifications to be an appraiser or appraisal umpire. It requires that the applicant must be of good moral character, and meet the qualification requirements set forth in this section.

To be licensed as an appraiser or appraisal umpire a person must be:

- A retired county, circuit, or appellate judge;
- An engineer as defined in s. 471.005, F.S., or as a retired professional engineer as defined in s. 471.005, F.S.;
- A general contractor, building contractor, or residential contractor pursuant to part I of ch. 489, F.S.;
- An architect licensed to engage in the practice of architecture pursuant to part I of ch. 481, F.S.;
- A Florida-licensed attorney; or
- A property and casualty adjuster licensed under part VI of 626, F.S.

To qualify, the property and casualty adjuster must have been licensed for at least 5 years as an adjuster before he or she may be licensed as an appraisal umpire.

In addition to meeting the license requirements, an individual must be:

- Trustworthy and competent;
- A natural person who is at least 18 years of age; and
- A United States citizen or legal alien who possesses work authorization from the United States Citizenship and Immigration Services.

The bill provides that an incomplete application expires six months after the date it is received by the department.

The bill provides that an applicant seeking to become licensed under this part may not be rejected solely by virtue of membership or lack of membership in any particular appraisal organization.

Licensure by Endorsement

The bill creates s. 626.9965, F.S., to permit the department to license by endorsement any person who the department certifies is qualified to practice as an appraiser or umpire. However, it prohibits the department from issuing a license by endorsement to any applicant who is under investigation in another state for any act that would constitute a violation of part XIV of ch. 626, F.S., until such time that the investigation is complete and disciplinary proceedings have been terminated.

Appointment of License

The bill creates s. 626.9966, F.S., to require an appraiser or umpire to appoint himself or herself to undertake the duties of an appraiser or umpire with the department in order to practice in the state. The fee for appointment and biennial renewal of appointment is \$60, as provided in s. 626.9963, F.S. The purpose of this provision is unclear. As defined in s. 626.015, F.S., the term “appointment” means the authority given by an insurer or employer to a licensee to transact insurance or adjust claims on behalf of an insurer or employer. The practice of a licensee appointing themselves is inconsistent with this definition.

Continuing Education

The bill creates s. 626.9967, F.S., to require appraiser and umpire licensees to submit to the department, as a condition of renewal of the license, satisfactory proof that, during the 2 years before his or her application for renewal, the licensee completed at least 24 hours of department-approved continuing education.

Appraiser continuing education course providers, instructors, and classroom courses must be approved by and registered with the department before the courses may be offered. The bill authorizes the department to adopt rules for the approval of course providers and instructors.

The bill prohibits an approved instructor from teaching any course that is outside the scope of part XIV of ch. 626, F.S. The effect of this provision is unclear but it appears to prohibit an approved instructor from teaching any other courses in subjects outside the scope of an appraiser or umpire. For example, the bill appears to prohibit a licensed architect, who is approved to teach a continuing education course for appraisers and umpires, from teaching a course directed for architects under ch. 481, F.S.

Partnerships, Corporations, and Other Business Entities

The bill creates s. 626.9968, F.S., to permit appraiser and umpire licensees to practice through a partnership, corporation, or other business entity that is registered with the department. A corporation or other business entity may not hold a license to practice property insurance

appraisal or umpire services. A partnership, corporation, or other business entity is not relieved of responsibility for the conduct or acts of its agents, employees, or officers.

Grounds for Compulsory Refusal, Suspension, or Revocation of a License

The bill creates s. 626.9969, F.S., to provide the grounds for the compulsory denial of an application, the suspension or revocation of a license, and to refuse to renew or continue a license, including committing fraud or dishonest practices in the conduct of business under the license and having been found guilty of or having plead guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under state or federal law or any crime that involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases. An appraiser license may also be denied if he or she has had a registration, license, or certification as an umpire revoked, suspended, or otherwise acted against in Florida or any other state, any nation, or any possession or district of the United States.

Grounds for Discretionary Refusal, Suspension, or Revocation of a License

The bill creates s. 626.9971, F.S., to provide the grounds for the discretionary denial of an application, the suspension or revocation of a license, and for refusal to renew or continue a license. The discretionary grounds include failure to timely communicate with the opposing party's appraiser without good cause, failure to exercise reasonable diligence, and violating any ethical standard for property insurance appraisers set forth in s. 626.9972, F.S.

A licensee may also be disciplined for failing to inform the department in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, a felony.

Ethical Standards for Appraiser

The bill creates s. 626.9972, F.S., to provide the following ethical standards for property insurance appraisers. An appraiser must:

- Maintain confidentiality of all information revealed during an appraisal except where disclosure is required by law;
- Maintain confidentiality of records;
- Charge fees that are reasonable and consistent with the nature of the case, charge a fee based on actual time spent or allocated, charge for costs actually incurred, and not accept a fee based on a percentage basis or contingent basis.
- Maintain records necessary to support charges for services and expenses and maintain such records for at least 5 years;
- Not engage in false or misleading advertising or marketing practices;
- Not engage in any business, provide any service, or perform any act that would compromise the appraiser's or umpire's integrity or impartiality, including being available to promptly commence the service and thereafter devote his or her time to its completion in the manner expected by all involved parties;
- Decline an appointment or selection, withdraw, or request appropriate assistance when the facts and circumstances of the service is beyond the person's skill or experience;

- Not give or accept any gift, favor, loan, or other item of value in an appraisal process except for the reasonable fee; and
- Not engage in ex parte communications.

The bill also provides that an appraiser must communicate with all parties in the manner agreed to by the parties. The bill prohibits communications in which a party dictates to an appraiser the results of the proceedings, the matters or elements that must be included or considered by the appraiser, or the actions that the appraiser may take.

Prohibitions and Penalties

The bill creates s. 626.9973, F.S., to provide that, effective October 1, 2016, a person may not use the name or title “property insurance appraiser,” “appraiser,” “property insurance appraisal umpire,” or “umpire” unless he or she is licensed pursuant to part XIV or ch. 626, F.S. The bill provides that a person who violates this prohibition commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.⁸⁸

Rulemaking Authority

The bill creates s. 626.9974, F.S., to authorize the department to adopt rules to:

- Establish the process for determining compliance with the licensure requirements;
- Prescribe the necessary forms; and
- Implement the rulemaking authority.

Appropriation

For the 2016-2017 fiscal year, section 2 of the bill appropriates \$605,874 in recurring funds and \$59,053 in nonrecurring funds from the Insurance Regulatory Trust Fund to the Department of Financial Services for four full-time equivalent positions with associated salary rate of 212,315 are authorized, for the purpose of implementing this act.

Effective Date

Except for the prohibition created in s. 626.9973, F.S., with an effective date of October 1, 2016, the bill provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁸⁸ Section 775.082, F.S., provides that the penalty for misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S. provides that the penalty for misdemeanor of the first degree is punishable by a fine not to exceed \$1,000.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The bill creates s. 626.9963, F.S., to delineate the following maximum fees for an appraiser appraisal umpires:

- Application: \$50 (nonrefundable);
- Initial license: \$5;
- Biennial appointment and appointment renewal: \$60; and
- Continuing education provider designation: \$100 per course.

The bill provides that the examination fee must be sufficient to cover the actual cost of the examination and reexamination, but does not set a maximum amount for that fee.

B. Private Sector Impact:

Applicants for an appraiser license and for an appraisal umpire license would be required to pay the application and license fees specified in the bill, including the cost of fingerprinting for a criminal history records check. According to FDLE, the cost for a state and national criminal history record check is \$38.75.⁹ Licensees would also incur costs related to compliance with the continuing education requirements.

C. Government Sector Impact:

According to the department, it estimates revenues from licensing fees of \$2,467,000 and expenditures of \$1,001,936 for FY 2015-2016; revenues of \$1,850,250 and expenditures of \$918,023 for FY 2016-2017; and revenues of \$2,304,500 and expenditures of \$918,203 for FY 2017-2018.

The department also indicated the need for additional FTE's to implement the new licensing requirements.

VI. Technical Deficiencies:

None.

⁹ See Criminal History Record Check Fee Schedule at: <http://www.fdle.state.fl.us/Content/getdoc/1acc7c3e-dac7-45d4-8739-0d221749d8ce/FAQ.aspx#13> (last visited December 2, 2015).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 626.9961, 626.9962, 626.9963, 626.9964, 626.9965, 626.9966, 626.9967, 626.9968, 626.9969, 626.9971, 626.9972, 626.9973, and 626.9974.

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.