

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 Appropriations

BILL: CS/CS/SB 922

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senator Garcia

SUBJECT: Insurance Adjusters

DATE: April 27, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders/Billmeier</u>	<u>Betta</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sanders/Billmeier</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 922 amends various statutes relating to insurance adjusters. The bill eliminates licensure for public adjuster apprentices and requires a public adjuster apprentice to be licensed as an all-lines adjuster and appointed as a public adjuster apprentice.

In addition, the bill:

- Eliminates the temporary license, which is not currently used;
- Revises the requirements for public adjusters to expressly prohibit unlicensed public adjusting that is done directly or indirectly;
- Deletes a provision of law held unconstitutional by the Florida Supreme Court;
- Excludes deductibles from the calculation of an adjuster's fee; and
- Reduces the time a public adjuster apprentice must be supervised before becoming eligible for licensure as a public adjuster.

In addition, the bill makes numerous changes to part VI of ch. 626, F.S., and other statutes applicable to adjusters to improve the efficiency of licensure and enforcement.

The Office of Insurance Regulation does not anticipate any impact to state funds or expenditures.¹

II. Present Situation:

Insurance Adjusters

Part VI of ch. 626, F.S., regulates insurance adjusters, which includes public adjusters, independent adjusters, and company employee adjusters. A “public adjuster” is any person, other than a licensed attorney, who, for compensation, prepares, completes, or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of an insured or third party.² An “independent adjuster” is any person who is self-employed or employed by an independent adjusting firm and who works for an insurer to ascertain and determine the amount of an insurance claim, loss, or damage, or to settle an insurance claim under an insurance contract. A “company employee adjuster” is any person employed in-house by an insurer who ascertains and determines the amount of an insurance claim, loss, or damage, or settles an insurance claim under an insurance contract.

Public adjusters are licensed by the Department of Financial Services (DFS) and are required to meet pre-licensing requirements, which include submitting an application, paying required fees, complying with requirements as to knowledge, experience, or instruction, and submitting fingerprints.

A policyholder who has sustained an insured loss may hire a public adjuster. The public adjuster will inspect the loss site, analyze the damages, assemble claim support data, review the insured’s coverage, determine current replacement costs, and confer with the insurer’s representatives to adjust the claim. Public adjuster fees are capped at ten to 20 percent of the insurance claim payments.³

Adjusting Firms

Adjusting firms are not required to be licensed by the DFS. If a firm chooses to obtain a license, it lasts for three years and costs \$60.⁴ An application for licensure must include:

- The name and address of each majority owner, partner, officer, and director of the adjusting firm;
- The name of the adjusting firm and its principal business address; and
- The location of each adjusting firm office and the name under which each office conducts or will conduct business.⁵

¹ Office of Insurance Regulation, *Senate Bill 922 Fiscal Analysis* (March 15, 2017) (on file with the Senate Appropriations Subcommittee on General Government).

² Section 626.854(1), F.S.

³ Section 626.854 (11), F.S.

⁴ Section 624.501, F.S.

⁵ Section 626.8696, F.S.

Solicitation by Public Adjusters

In 2008, the Legislature prohibited public adjusters from directly or indirectly through any other person or entity initiating contact or engaging in face-to-face or telephonic solicitation with any insured until at least 48 hours after the occurrence of an event that may be the subject of a claim under the insurance policy.⁶ In 2012, the Florida Supreme Court held the law violated a public adjuster's right to free speech because the statute regulated commercial speech and was more extensive than necessary to serve the state's interest.⁷

Public Adjuster Apprentices

A "public adjuster apprentice" is any person who:

- Is not a licensed public adjuster;
- Is employed by or has a contract with a licensed and appointed public adjuster or a public adjusting firm to assist a public adjuster in conducting business under the license; and
- Satisfies the licensing and character requirements of s. 626.8651, F.S.

To become licensed, a public adjuster apprentice applicant must be 18 years of age; a U.S. citizen; trustworthy; pay all fees applicable to adjuster licenses; and pass an examination. In addition, an applicant must possess specified certification related to claims adjustment and present to the DFS a bond in the amount of \$50,000. A public adjuster apprentice must complete a minimum of 100 hours per month for 12 months under the supervision of a licensed all-lines public adjuster before becoming eligible for licensure as a public adjuster.⁸ A public adjuster apprentice license is effective for 18 months unless the license expires due to lack of maintaining an appointment, is surrendered by the licensee, is terminated, suspended or revoked by the DFS, or is cancelled by the DFS upon issuance of a public adjuster license.⁹

Current law allows an appointing public adjusting firm to maintain up to 12 public adjuster apprentices concurrently.¹⁰ A supervising public adjuster may only be responsible for three public adjuster apprentices simultaneously. An apprentice has the same authority as a public adjuster except that an apprentice may not execute contracts for services of a public adjuster except under the direct supervision of a public adjuster.¹¹

III. Effect of Proposed Changes:

Adjusting Firms (Section 11)

Section 11 amends s. 626.8695, F.S., to require each business location established by an adjuster to designate a primary adjuster for that location. It also requires adjusting firms and branch locations of the adjusting firms to name primary adjusters. The primary adjuster is responsible for the supervision of the adjusters at that location. The primary adjuster is accountable for

⁶ Chapter 2008-220, L.O.F.

⁷ *Atwater v. Kortum*, 95 So.2d 85 (Fla. 2012).

⁸ Section 626.8651, F.S.

⁹ Section 626.8651(8), F.S.

¹⁰ Section 626.8651(7), F.S.

¹¹ Section 626.8651(11), F.S.

misconduct by those under his or her direct supervision. This section does not render a primary adjuster criminally liable to an act unless the primary adjuster personally committed the act, knew or should have known about the act constituting a violation of this act. Furthermore, this section adds contractor to the language whereby DFS may suspend or revoke the license of any adjuster employed [or contracted] by a person whose license has been suspended or revoked.

An adjusting firm location may not conduct insurance business unless a primary adjuster is designated and provides services to the firm at all times. If a primary adjuster ends his or her affiliation with the firm and the firm does not designate another primary adjuster within 90 days, the firm's license expires on the 91st day.

Any adjusting firm may determine a person's current licensure status by submitting an appointment request to the DFS.

Adjusters (Sections 1, 4, 8, 12, 13, 14, and 15)

Section 1 defines "adjuster" as a public adjuster¹² or an all-lines adjuster.

Section 4 amends s. 626.8548, F.S., and redefines an "all-lines adjuster" as "a person who, for money, commission, or any other thing of value, directly or indirectly undertakes on behalf of a public adjuster or insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage." This section further directs that an "all-lines adjuster" also includes "any person who, for money, commission, or any other thing of value, directly or indirectly solicits claims on behalf of a public adjuster, but does not include a paid spokesperson used as part of a written or an electronic advertisement or a person who photographs or inventories damaged personal property or business personal property if such person does not otherwise adjust, investigate, or negotiate for or attempt to effect the settlement of a claim."

Section 8 amends s. 626.864, F.S., to provide that an all-lines adjuster may be appointed as an independent adjuster, a public adjuster apprentice, or a company employee adjuster but not more than one concurrently.

Section 12 repeals s. 626.872, F.S., which created temporary licenses for all-lines adjusters.

Section 13 amends s. 626.874, F.S., to clarify that only authorized insurers or adjusting firms contracted with authorized insurers may designate emergency adjusters for temporary licensure by the DFS during a catastrophe.

Section 14 amends s. 626.875, F.S., to require adjusters to maintain records relating to claims for five years instead of the current three years.

Section 15 amends s. 626.876, F.S., to provide that an individual licensed as a public adjuster may not be simultaneously licensed as an all-lines adjuster. It further provides that an individual licensed as an all-lines adjuster and appointed as a company adjuster or a public adjuster

¹² See s. 626.854, F.S.

apprentice may not be simultaneously appointed or employed in a different adjuster capacity that would require an additional appointment type.

Public Adjusters (Sections 2 and 9)

Section 2 amends s. 626.854, F.S., to expand the definition of “public adjuster” to include persons who directly or indirectly prepare, complete, or file an insurance claim for an insured. The definition is further expanded to include persons who directly or indirectly solicit or perform specified other duties on behalf of a public adjuster, an insured, or a third-party claimant. It provides that the term does not include a person who photographs or inventories damaged personal property or a person performing duties under another professional license if the person does not otherwise solicit, adjust, investigate, or negotiate for or attempt to effect the settlement of a claim. It also removes a limitation that requires a consumer wishing to cancel a public adjuster contract to do so in writing or by phone.

This section repeals the restrictions on public adjuster solicitations within 48 hours after an event that may be the subject of an insurance claim.

The section prohibits public adjusters from charging a fee based on policy deductibles.

The section prohibits a contract provision that allows a public adjuster, public adjuster apprentice, or person acting on behalf of an adjuster or apprentice to choose the person that will perform repair work on a property insurance claim or provide goods or services that will require the insured or third-party claimant to expend funds in excess of those payable to the public adjuster under the terms of the contract for adjusting services.

Furthermore, section 2 creates a new paragraph to more specifically define what a person is prohibited from doing unless the person is a public adjuster or an attorney. A person who is not a public adjuster or attorney may not, for money or commission:

- Prepare, complete, or file an insurance claim for an insured or a third-party claimant;
- Act on behalf of or aid an insured or a third-party claimant in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract;
- Advertise for employment as a public adjuster; or
- Solicit, investigate, or adjust a claim on behalf of a public adjuster, an insured, or a third-party claimant.

Section 9 amends s. 626.865, F.S., to require a public adjuster, as part of the qualification and bond process, to be:

- Licensed in Florida as an all-lines adjuster; and
- To have been appointed on a continual basis for the previous six months as:
 - A public service apprentice under s. 626.8561, F.S.;
 - As an independent adjuster under s. 626.855, F.S.; or
 - As a company employee adjuster under s. 626.856, F.S.

Current law requires a public adjuster apprentice to serve as a public adjuster apprentice for one year before becoming a public adjuster. This section reduces the time to six months.

Public Adjuster Apprentices (Sections 3, 5 and 10)

Section 3 repeals s. 626.8541, F.S., which is the current law creating the license for public adjuster apprentices.

Section 5 creates s. 626.8561, F.S., to define a “public adjuster apprentice” as a person licensed as an all-lines adjuster who is appointed and employed by a public adjuster or public adjusting firm. The apprentice assists the public adjuster in determining the amount of any claim, loss or damage payable under an insurance contract.

Section 10 amends s. 626.8651, F.S., to provide the DFS will issue an appointment as a public adjuster apprentice to licensee who:

- Is licensed as an all-lines adjuster;
- Has filed with the DFS a bond¹³ executed and issued by a surety insurer in the amount of \$50,000, which is conditioned upon the faithful performance of duties as a public adjuster apprentice; and
- Maintains such bond unimpaired throughout the existence of the appointment and for at least one year after termination of the appointment.

This section provides that an appointing public adjusting firm may maintain no more than four public adjuster apprentices and that a supervising public adjuster may supervise no more than one apprentice at a time.

This section removes the limitation on solicitation of contracts by public adjuster apprentices.

Miscellaneous Provisions (Sections 6, 7, 16 and 17)

Section 6 amends s. 626.8584, F.S., to add a public adjuster or a public adjusting firm to the list of persons or entities who can appoint, employ or contract with a nonresident all-lines adjuster.

Under current law, a “nonresident all-lines adjuster” means a person who is:

- Not a resident of Florida;
- Currently licensed as an adjuster in his or her state of residence for all lines of insurance except life and annuities or, if a resident of a state that does not license such adjusters, meets the qualifications prescribed in s. 626.8734, F.S.; and
- Licensed as an all-lines adjuster and self-appointed or appointed and employed by an independent adjusting firm or other independent adjuster, by an insurer admitted to do business in this state or wholly owned subsidiary of an insurer admitted to do business in this state, or by other insurers under the common control or ownership of such insurer.¹⁴

This section removes the language, “other insurers under the common control or ownership of such insurer.”

¹³ The bond must be executed in favor of the DFS and must authorize recovery of the damages sustained if the licensee commits fraud or unfair practices. The aggregate liability of the surety may not exceed the amount of the bond and the bond may not be terminated without giving notice to the licensee and the DFS.

¹⁴ Section 626.8584, F.S.

Section 7 amends s. 626.861, F.S., to provide that an employee of an insurer handling claims with respect to residential property insurance can adjust such claims if the coverage does not exceed \$500.

Section 16 repeals s. 626.879, F.S., which allows the DFS to have a pool of adjusters in case of declarations of emergency. The DFS has not used the pool in a number of years and does not believe the statute is necessary.

Section 17 provides an effective date of January 1, 2018.

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:

The impact to the private sector is indeterminate. However, the Office of Insurance Regulation indicates “tightening the licensing requirements of public adjusters may result in improved insurer loss trends.”¹⁵

C. Government Sector Impact:

The Office of Insurance Regulation does not anticipate any impact to state funds or expenditures.¹⁶

VI. Technical Deficiencies:

None.

¹⁵ Office of Insurance Regulation, *Senate Bill 922 Fiscal Analysis* (March 15, 2017) (on file with the Senate Appropriations Subcommittee on General Government).

¹⁶ Office of Insurance Regulation, *Senate Bill 922 Fiscal Analysis* (March 15, 2017) (on file with the Senate Appropriations Subcommittee on General Government).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 626.015, 626.854, 626.8541, 626.8548, 626.8561, 626.8584, 626.861, 626.864, 626.865, 626.8651, 626.8695, 626.874, 626.875, and 626.876.

This bill repeals the following sections of the Florida Statutes: 626.872 and 626.879.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 25, 2017:

The committee substitute removes provisions of the bill requiring adjusting firms to obtain a license from the DFS and amends definitions of “public adjuster” and “all-lines adjuster” to exclude persons who photograph or inventory damaged property or persons performing duties under another professional license as long as the person does not otherwise act as an adjuster.

CS by Banking and Insurance on April 3, 2017:

- Creates a minimum \$2,500 penalty if a firm is required to be licensed but does not apply for a license;
- Removes a requirement that adjuster websites contain certain disclosures;
- Clarifies that paid spokespersons are exempt from licensure when promoting services; and
- Makes technical changes.

- B. **Amendments:**

None.