

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/SB 922

INTRODUCER: Banking and Insurance Committee and Senator Garcia

SUBJECT: Insurance Adjusters

DATE: April 24, 2017

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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.

Current law authorizes, but does not require, licensure of adjusting firms, unless the person operating the firm fails to designate a primary adjuster within specified timeframes. The bill requires licensure for adjusting firms and provides application requirements and background checks for firm owners and officers.

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 Department of Financial Services (DFS) anticipates \$2,500 per year in recurring revenue from penalties imposed for failing to obtain a license as an adjusting firm.¹

The DFS will need to make updates to its licensing system to allow for adjusting firm licenses; however, these changes will be absorbed within existing resources.²

The Office of Insurance Regulation does not anticipate any impact to state funds or expenditures.³

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.⁴ 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.⁵

Adjusting Firms

Under current law, 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 \$60.⁶ An application for licensure must include:

¹ Department of Financial Services, *Senate Bill 922 Fiscal Analysis* (April 3, 2017) (on file with the Senate Appropriations Subcommittee on General Government).

² *Id.* at p. 5.

³ Office of Insurance Regulation, *Senate Bill 922 Fiscal Analysis* (March 15, 2017) (on file with the Senate Appropriations Subcommittee on General Government).

⁴ Section 626.854(1), F.S.

⁵ Section 626.854 (11), F.S.

⁶ Section 624.501(20), F.S.

- 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.⁷

The law provides grounds for mandatory and discretionary denial, suspension, or revocation of an adjusting firm license.⁸ Currently there are no licensed adjusting firms within the State of Florida; however, the DFS reports there are 3,736 unlicensed adjusting firms in the DFS system.⁹ Unlicensed firms, led by unknown individuals, are controlling primary adjusters and appointed adjusters. Under current law, it would be acceptable for a person who steals money from their insurance clients, has their license revoked, and is convicted of a felony crime for the act, to start an adjusting firm.¹⁰ In comparison, there are 39,082 licensed insurance agencies with over 24,437 additional branch locations. The DFS is aware of who owns and operates each of these entities. Convicted criminals and individuals whose license have been revoked are prohibited from owning or controlling these organizations.¹¹ These licensees do not currently pay a fee for licensure by the DFS and the license does not have to be renewed. These licensees are obligated to provide electronic updates when they change addresses or leadership.¹²

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.¹³ 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.¹⁴

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.

⁷ Section 626.8696, F.S.

⁸ Section 624.501, F.S.

⁹ Email from Elizabeth Boyd, Legislative Affairs Director, Department of Financial Services (April 12, 2017) (on file with Senate Appropriations Subcommittee on General Government).

¹⁰ Email from Elizabeth Boyd, Legislative Affairs Director, Department of Financial Services (April 12, 2017) (on file with the Senate Subcommittee on General Government).

¹¹ *Id* at p. 2.

¹² *Id* at p. 2

¹³ Chapter 2008-220, L.O.F.

¹⁴ *Atwater v. Kortum*, 95 So.2d 85 (Fla. 2012).

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.¹⁵ 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.¹⁶

Current law allows an appointing public adjusting firm to maintain up to 12 public adjuster apprentices concurrently.¹⁷ 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.¹⁸

III. Effect of Proposed Changes:

Adjusting Firms (Sections 1, 3, 4, 14 and 15)

Section 1 amends s. 624.501, F.S. to remove the \$60 fee associated with an original or renewal license for an adjusting firm.

Section 3 amends s. 626.022, F.S., to include adjusting firms as part of the scope of the act.

Section 4 amends s. 626.112, F.S., to require an entity acting as an adjusting firm to have a license from the Department of Financial Services (DFS) for each place of business¹⁹ where it engages in activities that may only be performed by a licensed adjuster. This section exempts individual adjusters operating in their own names and insurance companies that directly appoint adjusters from the firm's licensing requirements.

A branch firm, established by a licensed adjusting firm, is not required to be licensed if:

- It transacts business under the same name and federal tax identification number as the licensed adjusting firm;
- It has designated with the DFS a licensed primary adjuster in charge of the branch firm as required by s. 626.8695, F.S.; and
- Within 30 days after insurance transactions begin at the branch firm, the address and telephone number of the branch firm are submitted to the DFS for inclusion in the licensing record of the licensed adjusting firm.

¹⁵ Section 626.8651, F.S.

¹⁶ Section 626.8651(8), F.S.

¹⁷ Section 626.8651(7), F.S.

¹⁸ Section 626.8651(11), F.S.

¹⁹ The bill allows an adjusting firm to have "branch" places of business that operate under the same license. A branch place of business must transact business under the same tax identification numbers as the licensed firm, must have a designated primary adjuster, and submit contact information to the DFS within 30 days after insurance transactions begin at the location.

This section provides for fines of \$2,500 for a first time violation and up to \$10,000 for any subsequent violation, if a firm is required to be licensed, but does not file an application.

Section 14 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 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.

Section 15 amends s. 628.8696, F.S., to revise the application process for an adjusting firm license. It allows a third party to sign the application on the firm's behalf but the applicant is accountable for any errors or misstatements. The application for an adjusting firm license must include:

- The names of the president, senior vice president, secretary, treasurer, and limited liability company member who directs or participates in the management and control of the firm;
- The resident address of each person required to be listed in the application;
- The name, principal street address, and valid e-mail address of the adjusting firm, registered agent, person or company authorized to accept service on behalf of the firm;
- The physical address of each branch firm, including its name, valid email address, and telephone number and the date the branch firm began transacting insurance business;
- The name of the primary adjuster in full-time charge of the adjusting firm office, including branch firms, and corresponding location;
- It requires fingerprint background checks on the following:
 - A sole proprietor, if the applicant is a sole proprietor; and
 - Each individual who directs or participates in the management or control of an incorporated firm whose shares are not traded on a securities exchange; and
- Any additional information the DFS requires by rule to ascertain the trustworthiness and competence of persons required to be listed on the application and to ascertain such persons meet the requirements of this code. However, the DFS may not require credit or character reports be submitted for such persons.

Fingerprints submitted to the DFS must be:

- Submitted by a law enforcement agency or other entity approved by the DFS;

- Accompanied by a fingerprint processing fee;²⁰ and
- Processed in accordance with s. 624.34, F.S.

However, fingerprints of currently licensed and appointed individuals, under this act, do not need to be filed with the DFS.

An adjusting firm license will remain in force unless canceled, suspended, revoked or otherwise terminated or expired by operation of law.

Adjusters (Sections 2, 7, 11, 16, 17, 18 and 19)

Section 2 defines “adjuster” as a public adjuster²¹ or an all-lines adjuster. It allows an “all-lines adjuster” to act on behalf of a public adjuster. This conforms to the elimination of the licensure classification for public adjuster apprentices and their reclassification as licensed all-lines adjusters appointed and employed by a public adjuster or public adjusting firm.

Section 7 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 paid spokespersons used as part of a written or an electronic advertisement. The term does not apply to life insurance or annuity contracts.”

Section 11 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 16 repeals s. 626.872, F.S., which created temporary licenses for all-lines adjusters.

Section 17 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 18 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 19 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 apprentice may not be simultaneously appointed or employed in a different adjuster capacity that would require an additional appointment type.

²⁰ Section 624.01, F.S.

²¹ See s. 626.854, F.S.

Public Adjusters (Sections 5 and 12)

Section 5 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 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. Current language was ruled unconstitutional by the Florida Supreme Court.²²

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 salvage, repair, or other work on a property insurance claim.

Furthermore, this section 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 12 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 6, 8 and 13)

Section 6 repeals s. 626.8541, F.S., which is the current law creating the license for public adjuster apprentices.

²² *Atwater v. Kortum*, 95 So. 3d 85 (Fla. 2012).

Section 8 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 13 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 bond²³ 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 9, 10, 20 - 22.)

Section 9 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.²⁴

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

Section 10 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.

²³ 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.

²⁴ Section 626.8584, F.S.

Section 20 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 21 amends s. 626.9953, F.S., to make a technical change.

Section 22 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.”²⁵

C. Government Sector Impact:

The Department of Financial Services (DFS) anticipates \$2,500 per year in recurring revenue from penalties imposed for failing to obtain a license as an adjusting firm.

The DFS will need to make updates to its licensing system to allow for adjusting firm licenses; however, these changes will be absorbed within existing resources.²⁶

²⁵ Office of Insurance Regulation, *Senate Bill 922 Fiscal Analysis* (March 15, 2017) (on file with the Senate Appropriations Subcommittee on General Government).

²⁶ Department of Financial Services, *Senate Bill 922 Fiscal Analysis* (April 3, 2017) (on file with the Senate Appropriations Subcommittee on General Government).

The Office of Insurance Regulation does not anticipate any impact to state funds or expenditures.²⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 624.501, 626.015, 626.022, 626.112, 626.854, 626.8541, 626.8548, 626.8561, 626.8584, 626.861, 626.864, 626.865, 626.8651, 626.8695, 626.8696, 626.874, 626.875, 626.876, and 626.9953.

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 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁷ Office of Insurance Regulation, *Senate Bill 922 Fiscal Analysis* (March 15, 2017) (on file with the Senate Appropriations Subcommittee on General Government).