

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 671 Prohibited Property Insurance Practices

**SPONSOR(S):** Regulatory Affairs Committee; Insurance & Banking Subcommittee; Broxson

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Peterson	Luczynski
2) Government Operations Appropriations Subcommittee	9 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee	10 Y, 5 N, As CS	Peterson	Hamon

### SUMMARY ANALYSIS

The Department of Business and Professional Regulation (DBPR), together with the boards, programs, and commissions created within the DBPR, has responsibility for administering the licensing programs of most of the state's regulated non-medical, non-insurance businesses and professionals. Professionals within its jurisdiction include those typically involved in building and construction, as well as other forms of property development, repair, and maintenance. These professionals may engage in services involving property insurance claims.

The bill prohibits activities by licensed professionals that may result in fraudulent or inflated property insurance claims. Specifically, the bill creates new grounds for discipline against a licensee who:

- Gives or receives referral fees or other items of value as an inducement for business that is paid by property insurance proceeds;
- Interprets insurance coverages or duties of the policy, unless the licensee is separately licensed as an adjuster under part VI of ch. 626, F.S.; and
- Fails to give an insured a good faith estimate that is detailed and itemized of the cost of services and materials to be provided for repairs undertaken pursuant to a property insurance claim before executing the contract authorizing the work.

The bill has a positive, yet indeterminate fiscal impact to revenues deposited into the Professional Regulation Trust Fund within the DBPR. The DBPR estimates that potential costs of implementing the provisions of the bill could range from \$65,927 in FY 2016-17 to \$57,383 in FY 2017-18 and FY 2018-19. However, it is anticipated that the DPBR can implement the enforcement provisions of the bill within existing resources. The bill has no fiscal impact on local governments. The bill likely has a positive, yet indeterminate fiscal impact on the private sector.

The bill provides an effective date of July 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

The Department of Business and Professional Regulation (DBPR) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.<sup>1</sup> The DBPR, together with the boards, programs, and commissions created within the DBPR, has responsibility for administering the licensing programs of most of the state's regulated non-medical, non-insurance businesses and professionals. Professionals within its jurisdiction include, among others, those involved in building and construction, as well as other forms of property development, repair, and maintenance, such as: architects; asbestos contractors; building code administrators and investigators; construction industry contractors (air conditioning, building, general, mechanical, plumbing, roofing, drywall); electrical and alarm system contractors; geologists; home inspectors; and mold-related services.<sup>2</sup> These professionals may engage in services involving property insurance claims.

Chapter 455, F.S., sets forth general licensing provisions applicable to all professions regulated by the DBPR which supplement specific licensing requirements that may be included within a profession's practice act. For example, part I of ch. 489, F.S., regulates construction contracting and establishes the duties and powers of the Construction Industry Licensing Board (CILB). Section 455.227, F.S., sets forth grounds for discipline, penalties, and enforcement actions applicable to all professions. Section 489.129, F.S., further refines disciplinary proceedings with respect to professions licensed under part of ch. 489 and licensed and regulated by the CILB.

Chapter 455, F.S., does not currently prohibit the offering or receipt of referral fees by licensed professionals.<sup>3</sup> Referral fees are not direct costs of a repair covered by an insurance policy. When referral fees are offered and accepted, they may be inflating the cost of claims or creating incentives for filing fraudulent claims. Contractors are currently prohibited in part VI of ch. 626, F.S., from adjusting claims on behalf of an insured, unless they are licensed as a public adjuster.<sup>4</sup> The Department of Financial Services has authority to administer this prohibition, but does not have authority to take action against the license of a contractor who violates the prohibition. There have been reported incidences of professionals requiring an insured to sign an agreement authorizing work with limited or no detail regarding the scope or cost. This practice puts the consumer at risk of incurring unanticipated costs or authorizing unwanted work for which the consumer could be held liable by the professional.

#### **Effect of the Bill**

The bill creates a new section within ch. 455, F.S., which prohibits activities by licensees<sup>5</sup> that may result in fraudulent or inflated property insurance claims. Specifically, a licensee commits a violation and may be disciplined if the licensee:

- Directly or indirectly offers, delivers, receives, or accepts any compensation, inducement, or reward for the referral of any business for which property insurance proceeds are payable;
- Interprets or advises an insured regarding coverages or duties under the insured's property insurance policy or adjusts a property insurance claim on behalf of the insured, unless the licensee holds an unencumbered license as a public adjuster pursuant to part VI of ch. 626; and

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<sup>1</sup> Ch. 93-220, Laws of Fla.

<sup>2</sup> See generally FLORIDA DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION, *Our Businesses and Profession*, <http://www.myfloridalicense.com/dbpr/divisions.html> (last visited Jan. 29, 2016).

<sup>3</sup> However, fees may be prohibited by the practice acts of specific professionals. For example, s. 468.8419(1), F.S., prohibits any person from accepting any compensation or other inducement from a mold remediator for the referral of business to the mold remediator.

<sup>4</sup> s. 626.854(16), F.S.

<sup>5</sup> Section 455.01(5), F.S., defines "licensee" as "any person issued a permit, registration, certificate, or license by the [DBPR]."

- Fails to provide an insured with a good faith estimate that is detailed and itemized of the cost of services and materials to be provided for repairs undertaken pursuant to a property insurance claim before the agreement authorizing such repairs is executed. The licensee does not violate the statute if the estimate changes as a result of the adjustment process.

B. SECTION DIRECTORY:

**Section 1:** Creates s. 455.2278, F.S., prohibited property insurance practices.

**Section 2:** Provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill has a positive, yet indeterminate fiscal impact to revenues deposited into the Professional Regulation Trust Fund within the DBPR due to the collection of fines associated with the enforcement and prosecution of violations under provisions created in the bill.<sup>6</sup>

2. Expenditures:

The DBPR indicates the need for \$57,383 in recurring funds and \$8,544 in nonrecurring funds, \$65,927 in total from the Professional Regulation Trust Fund, and one full-time equivalent position with associated salary rate of 34,464 to enforce provisions created in the bill.<sup>7</sup> However, based on current staffing vacancies and recent budget reversions (Professional Regulation Program reversions: FY 2014-15 - \$3.5 million; FY 2013-14 - \$3.0 million; and FY 2012-13 - \$2.7 million) it is anticipated that the DPBR can implement the enforcement provisions of the bill within existing appropriations and staffing.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill prohibits activities by licensed professionals that may result in fraudulent or inflated property insurance claims. To the extent that the new enforcement authority reduces these abuses, consumers will benefit from reduced costs for repairs. The cost of claims may be lower and, as a result, insurance premiums may be lower.

D. FISCAL COMMENTS:

None.

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<sup>6</sup> Email correspondence with The Department of Business and Professional Regulation (Jan. 29, 2016) on file with the Government Operations Appropriations Subcommittee.

<sup>7</sup> *Id.*

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2016, the Insurance & Banking Subcommittee adopted a proposed committee substitute (PCS) and one amendment to the PCS and reported the bill favorably as a committee substitute. The amended PCS:

- Moved the new disciplinary standards created by the bill from part VI of ch. 626, F.S., to ch. 455, F.S., which relates to licensees under the jurisdiction of the DBPR.
- Broadened the prohibition on inducements for the referral of business in property insurance claims to cover all licensees regulated by the DBPR and any repairs paid for by property insurance proceeds.
- Broadened the prohibition on interpreting or advising an insured on the scope of coverages under an insurance policy to cover all licensees regulated by the DBPR.
- Removed the reference to the 5-day rescission period.

On February 25, 2016, the Regulatory Affairs Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarified that a licensee does not violate the statute if the required estimate changes as a result of the adjustment process.

This analysis is drafted to the committee substitute as passed by the Regulatory Affairs Committee.