

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 Judiciary Committee

BILL: CS/CS/SB 2264

INTRODUCER: Judiciary Committee, Banking and Insurance Committee, and Senator Bennett

SUBJECT: Property Insurance Claims

DATE: April 14, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Green	Burgess	BI	Fav/CS
2.	Daniell	Maclure	JU	Fav/CS
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill makes significant changes to the regulation of public adjusters. These changes provide greater oversight of public adjusters. The bill:

- Prohibits public adjusters from making certain statements in advertisements or solicitations;
- Caps public adjusters' fees in supplemental or reopened cases at 20 percent;
- Clarifies that after one year of a declaration of emergency, the compensation cap that apply to non-emergencies goes into effect;
- Requires persons acting on behalf of an insurer to provide at least 48 hours' notice to an insured or claimant, public adjuster, or legal representative prior to scheduling a meeting with the claimant or an onsite inspection of the insured property;
- Requires a public adjuster to ensure prompt notice of property loss claims to the insurer;
- Prohibits an insurer from excluding the public adjuster from in-person meetings with the insured;
- Prohibits a public adjuster from restricting or preventing an insurer, or other person acting on behalf of the insurer, from having reasonable access at reasonable times to any insured or claimant or to the insured property that is the subject of the claim;

- Prohibits a public adjuster from acting or failing to reasonably act in a manner that would obstruct or prevent an insurer or insurer's adjuster from timely gaining access to conduct an inspection of the insured property;
- Provides restrictions for licensed contractors and subcontractors;
- Mandates that certain information be included in all public adjuster contracts;
- Requires public adjuster apprentices to complete additional hours of continuing education; and
- Defines the terms "supplemental or reopened claims" and "written advertisement."

In addition, the bill provides that the window of time to file a claim for damage caused by windstorm or hurricane is three years.

This bill amends the following sections of the Florida Statutes: 626.854, 626.8651, and 626.8796. This bill creates section 626.70132, Florida Statutes.

II. Present Situation:

Public Adjusters

Section 626.854, F.S., defines a public adjuster as 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 the insured or third party. Public adjusters are employed exclusively by a policyholder who has sustained an insured loss. Public adjusters 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.

The statute provides that a public adjuster may not charge a fee unless a written contract was executed prior to the payment of a claim. Public adjusters are prohibited from charging more than 20 percent of the insurance claims payment on non-hurricane claims and 10 percent of the insurance claims payment on hurricane claims for claims made during the first year after the declaration of the emergency. These fee caps apply only to residential property insurance policies and condominium association policies. There is no fee cap on re-opened or supplemental hurricane claims; however, the fee cannot be based on any payments made by the insurer to the insured prior to the time of the public adjuster contract.

Insureds or claimants have five business days after the date on which the contract is executed to cancel a public adjuster's contract during a state of emergency declared by the Governor. Insureds or claimants have three business days to cancel a contract as to claims involving non-emergencies. Public adjuster contracts must be in writing and must display an anti-fraud statement.

As of June 2009, Florida had 2,914 licensed, bonded and trained public adjusters. They are licensed by the Department of Financial Services.

Task Force on Citizens Property Insurance Claims Handling and Resolution¹

During the 2007 Special Session, the Legislature directed the Task Force on Citizens Property Insurance Claims Handling and Resolution (Task Force) to make recommendations to the legislative and executive branches relating to the appropriate handling, service, and resolution of the open 2004/2005 hurricane claims of Citizens Property Insurance Corporation (Citizens). During review of Citizens' hurricane claims, the Task Force became aware of the impact that public adjusters have on the claims process. According to representatives of Citizens, of the 3,300 open claims that were in mediation or appraisal, at least 90 percent of the insureds were represented by public adjusters.

The Task Force found that while the services of public adjusters can be beneficial to policyholders who have suffered a loss, the current laws do not adequately protect consumers from unscrupulous public adjusters. The Task Force heard testimony that some public adjusters were not properly trained or qualified to represent insureds. Also, some adjusters charged exorbitant fees, which oftentimes were not apparent to insureds because the fees were not prominently displayed in the public adjuster contract. Stakeholders also testified that there was a need for an apprenticeship program for public adjusters so that individuals would be knowledgeable and experienced when they became public adjusters.

2008 Legislation

In 2008, laws were enacted to enforce how public adjusters will operate in Florida. The reforms arose out of the Task Force. The legislation did the following:

- Limited contingency fees, based on services provided, to 10 percent on catastrophic claims and 20 percent on non-catastrophic claims.
- Prohibited solicitations on Sundays.
- Limited solicitations to the hours between 8:00 a.m. and 8:00 p.m.
- Prohibited the public adjuster from entering into a contract with an insured until 48 hours after the occurrence of the loss.
- Prohibited a public adjuster from giving any monetary loan or advance to a client or prospective client, valued in excess of \$25.
- Required all applicants to pass the public adjuster exam without exemptions, including those that have been previously licensed in another state.
- Required continuing education courses.
- Required all applicants for licensure to complete 12 months of employment as an apprentice to a licensed public adjuster before becoming a licensed adjuster.

A lawsuit, funded and supported by the Florida Association of Public Insurance Adjusters, has been filed in Leon County Circuit Court to challenge the constitutionality of the 48-hour solicitation law.² This case is currently being litigated.

¹ See Task Force on Citizens Property Insurance Claims Handling and Resolution, <http://www.taskforceoncitizensclaimshandling.org/Default.htm> (last visited Apr. 10, 2010).

² Case number 37 209 CA 003926, Fla. 2d Cir., filed on October 6, 2009.

Office of Program Policy Analysis and Government Accountability (OPPAGA) Study³

Legislation passed in the 2009 legislative session, directed OPPAGA to examine Florida's regulation of public insurance adjusters. OPPAGA's research showed that the number of licensed public adjusters in Florida has grown significantly in the last six years, and the incidence of complaints, regulatory actions, and allegations of fraud involving public adjusters is generally low. The Division of Insurance Fraud received 937 complaints about fraud related to public adjusters from insurers and others, investigated 269 of the complaints, and made 31 arrests from January 2004 to December 2009.

OPPAGA's analysis of Citizens' claims data found that cases took longer to reach a settlement and received higher payments when insureds used public adjusters.

III. Effect of Proposed Changes:**Public Adjusters (Section 1)**

The bill amends s. 626.854, F.S., relating to prohibitions against certain acts by public insurance adjusters. The bill specifies that the following statements, if made in a public adjuster's advertising or solicitation, will be considered a deceptive insurance trade practice and thereby a violation of s. 626.9541, F.S.:

- A statement that invites a policyholder to submit a claim when there may not be covered damage to insured property;
- A statement that invites the insured policyholder to submit a claim by offering monetary or other valuable inducement;
- A statement that invites an insured policyholder to submit a claim by stating that there is "no risk" to the policyholder by submitting such claim; or
- A statement or use of a logo that would imply that the solicitation was distributed by a governmental agency.

The bill defines "written advertisement" as including only newspapers, magazines, flyers, brochures, and bulk mailers, and requires that all written advertisements have the following disclaimer:

THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD A CLAIM
FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU ARE
SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU MAY
DISREGARD THIS ADVERTISEMENT.

The bill provides that compensation for a reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment. Additionally, for claims based on events

³ See Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Public Adjuster Representation in Citizens Property Insurance Corporation Claims Extends the Time to Reach a Settlement and Also Increases Payments to Citizens' Policyholders*, Report No. 10-06 (Jan. 2010), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1006rpt.pdf> (last visited Apr. 10, 2010).

that are the subject of a declaration of emergency, after the period of one year, the compensation cap for non-emergencies applies.

When a person acting on behalf of an insurer needs access to an insured or claimant, or to the insured property, the person must provide at least 48 hours notice to the insured or claimant, public adjuster, or legal representative before scheduling a meeting with the claimant or an onsite inspection of the insured property. The insured or claimant may deny access to the property if notice has not been given, or may waive the notice requirement.

The bill provides that the public adjuster must ensure prompt notice of a claim is given to the insurer, that the public adjuster's contract is provided, that the property is made available for the insurer's inspection, and that the insurer is given an opportunity to interview the insured directly. The insurer may not exclude the public adjuster from its in-person meetings with the insured and the insurer must meet or communicate with the public adjuster in order to reach agreement as to the scope of the covered loss. The bill provides that these requirements *do* impair the terms and conditions of the insurance policy in effect at the time the claim is filed.

The bill prohibits a public adjuster from restricting or preventing an insurer, company employee adjuster, independent adjuster, attorney, investigator, or other person acting on behalf of the insurer from having reasonable access at reasonable times to any insured or claimant or to the insured property.

Additionally, a public adjuster may not act or fail to reasonably act in any manner that would obstruct or prevent an insurer or insurer's adjuster from timely gaining access to conduct an inspection of any part of the insured property for which there is a claim. The public adjuster may be present for the inspection of the property but, if the lack of availability of the public adjuster would otherwise delay the access or inspection by the insurer, the public adjuster or insured must allow the insurer to gain access to the property without the participation or presence of the public adjuster or insured.

The bill provides that a licensed contractor, or subcontractor, may not adjust a claim for an insured without holding a public adjuster's license and being compliant with the license. This provision, however, does not prohibit a licensed contractor, if asked by the residential property owner, from discussing or explaining a bid for construction or repair of the damaged property, as long as the contractor charges only the usual and customary fees applicable for the work to be performed.

Public Adjuster Apprentice License (Section 2)

This bill amends s. 626.8651, F.S., relating to public adjuster apprentices. The bill requires a public adjuster apprentice to complete a minimum of eight hours of continuing education, two hours of which must be related to ethics. The education must inform the person about current insurance laws in order to enable him or her to engage in business as an insurance adjuster fairly and without injury to the public.

According to the Department of Financial Services, additional continuing education may be unnecessary for the following reasons:

- The apprentice must obtain an Accredited Claims Adjuster designation prior to being licensed, which includes training and instruction in adjusting damages and losses under insurance contracts;
- The apprentice license is only issued for 18 months, and during this time period the apprentice is directly supervised by a permanent licensed public adjuster;
- The apprentice license is considered “temporary” and no other temporary license issued by the department requires continuing education; and
- An appropriation will be needed to modify the continuing education computer system.⁴

Public Adjuster Contracts (Section 3)

The bill amends s. 626.8796, F.S., to require that a public adjuster contract include:

- The full name, business address, and license number of the public adjuster;
- The full name of the public adjusting firm;
- The insured’s full name and address;
- A brief description of the loss;
- The percentage of compensation of the public adjuster’s services;
- The type of claim; and
- The signatures of the public adjuster and all named insureds. If all named insureds’ signatures are not available, the public adjuster shall submit an affidavit signed by the available insured attesting that he or she has the authority to enter into the contract and settle the claims on behalf of the other insureds.

An unadulterated copy of the executed contract must be sent to the insurer within 30 days of its execution.

Windstorm and Hurricane Claim (Section 4)

The bill creates s. 626.70132, F.S., which bars any windstorm or hurricane claim, supplemental claim, or reopened claim under personal lines residential coverage that was given to the insurer more than three years after the hurricane first made landfall or the windstorm caused the covered damage. The bill defines “supplemental or reopened claim” to be a claim for recovery of additional payments for losses from the same hurricane or windstorm for which the insurer has already paid pursuant to an initial claim. The bill provides that this section does not affect any applicable limitation on civil actions for claims, supplemental claims, or reopened claims timely filed.⁵

⁴ Dep’t of Financial Servs., *Bill Analysis and Fiscal Impact Statement, PCS for HB 1181* (Mar. 23, 2010) (on file with the Senate Committee on Judiciary). House bill 1181 is similar to this bill and includes the same continuing education requirements for public adjuster apprentices as this bill.

⁵ Section 95.11, F.S., provides a five-year statute of limitations for actions on contracts. An insurance policy is a contract, so the five-year statute of limitations in s. 95.11, F.S., applies to insurance policies. Thus, when an insurance company breaches the insurance contract, the policyholder has five years from the breach to file suit.

Effective Date (Section 5)

This act shall take effect January 1, 2011.

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:

A person seeking a public adjuster apprentice license will incur costs associated with the additional continuing education requirements of the bill.

C. Government Sector Impact:

According to the Department of Financial Services, the bill will have a non-recurring fiscal impact of \$30,000 on the department, which is needed to modify the department's continuing education system.⁶

VI. Technical Deficiencies:

On line 225, the bill provides that certain requirements *do* impair the terms and conditions of the insurance policy in effect at the time the claim is filed. It appears that the word "not" is missing from line 225. The Legislature may wish to amend the bill to include the word "not" so that the sentence reads: "This section does not impair the terms and conditions of the insurance policy in effect at the time the claim is filed."

VII. Related Issues:

None.

⁶ Dep't of Financial Servs., *supra* note 4.

VIII. 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 Judiciary on April 13, 2010:

The committee substitute:

- Changes the title of the bill from “an act relating to public adjusters” to “an act relating to property insurance claims”;
- Changes the amount of compensation for a reopened or supplemental claim from 30 percent to 20 percent of the claim payment;
- Maintains current law that reopened or supplemental claims are not subject to other compensation cap limitations;
- Clarifies that one year after a declaration of emergency, the compensation cap that applies to non-emergencies goes into effect;
- Requires persons acting on behalf of an insurer to provide at least 48 hours’ notice to an insured or claimant, public adjuster, or legal representative prior to scheduling a meeting with the claimant or an onsite inspection of the insured property;
- Prohibits an insurer from excluding a public adjuster from an in-person meeting with the insured;
- Requires the insurer and the public adjuster to meet or communicate in an effort to reach an agreement as to the scope of the covered loss under the insurance policy;
- Prohibits a public adjuster from restricting or preventing an attorney, as well as other persons acting on behalf of the insurer, from having reasonable access at reasonable times to any insured or claimant or to the insured property;
- Provides that a licensed contractor or subcontract may not adjust a claim on behalf of an insured without being licensed and compliant as a public adjuster;
- Requires a public adjuster contract to be signed by all named insureds;
- Changes the effective date from July 1, 2010, to January 1, 2011; and
- Makes technical changes.

CS by Banking and Insurance on March 17, 2010:

The committee substitute:

- Requires a public adjuster’s contract to include the following:
 - license number of the public adjuster;
 - brief description of the insured’s loss;
 - percentage of compensation for the public adjuster’s services;
 - type of claim, including an emergency claim, non-emergency claim, or supplemental claim;
- Defines criteria for deceptive or misleading statements on advertisement or solicitation and defines “written advertisement”;

- Provides that compensation for a reopened or supplemental claim may not exceed 30 percent of the reopened or supplemental claim payment and may not exceed the cap for the overall claim, inclusive of the supplemental claim;
- Provides notification of property loss to insurers by public adjusters;
- Provides communication requirements between public adjusters and insurers;
- Prohibits public adjusters from obstructing communications between insured and insurers;
- Prohibits licensed contractors from adjusting a claim on behalf of an insured without being a licensed public adjuster;
- Limits subcontractors to discuss bids encompassing only their specific specialty for which they are qualified; and
- Requires continuing education for public adjuster apprentices;
- Removes definition of “solicit” or “solicitation”;
- Removes prohibition on contacting prospective customers;
- Removes requirements on unsolicited written communications;
- Removes fee structure; and
- Removes definition of “claim valuation.”

B. Amendments:

None.