

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 Banking and Insurance

BILL: CS/SB 922

INTRODUCER: Banking and Insurance Committee and Senator Garcia

SUBJECT: Insurance Adjusters

DATE: April 5, 2017

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------|----------------|-----------|---------------|
| 1. | Billmeier | Knudson | BI | Fav/CS |
| 2. | | | AGG | |
| 3. | | | AP | |

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.

II. Present Situation:

Insurance Adjusters

Part VI, 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.¹ 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.

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 10-20 percent of the insurance claim payments.²

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

Adjusting Firms

Adjusting firms are not required to be licensed by the DFS. If a firm chooses to obtain a license, it lasts for 3 years and costs \$60.³ 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.⁴

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.⁵ In 2012, the Florida Supreme Court held the law violated a public

¹ s. 626.854(1), F.S.

² s. 626.854 (11), F.S.

³ s. 624.501(20), F.S.

⁴ s. 626.8696, F.S.

⁵ ch. 2008-220, L.O.F.

adjuster's right to free speech because the statute regulated commercial speech and was more extensive than necessary to serve the state's interest.⁶

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.

A public adjuster apprentice must complete a minimum of 100 hours per month of employment under the supervision of a licensed and appointed all-lines public adjuster in order to qualify for licensure as a public adjuster.⁷

Current law allows an appointing public adjusting firm to maintain up to 12 public adjuster apprentices.⁸ A supervising public adjuster may only be responsible for three public adjuster apprentices. 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.⁹

III. Effect of Proposed Changes:

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

The bill requires an entity acting as an adjusting firm to have a license from the DFS for each place of business¹⁰ where it engages in activities that may only be performed by a licensed adjuster. The bill exempts individual adjusters operating in their own names and insurance companies that directly appoint adjusters from the firm's licensing requirements. The bill provides for fines of up to \$10,000 if a firm is required to be licensed but does not file an application.

The bill revises 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. It requires 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. It requires fingerprint background checks on all persons named in the application. The application also requires the email address of the firm and the name, address, and email address of the person authorized to accept service of process on the adjusting firm's behalf. The application must include the name of the primary adjuster at the firm. The bill provides that a

⁶ *Atwater v. Kortum*, 95 So.2d 85 (Fla. 2012).

⁷ s. 626.8651(6), F.S.

⁸ s. 626.8651(7), F.S.

⁹ s. 626.8651(11), F.S.

¹⁰ 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.

license will be issued at no charge and will remain in force unless canceled, suspended, or revoked. The bill removes the current \$60 fee for initial and renewal licensure.

The bill requires 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. 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.

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

The bill defines "adjuster" as a public adjuster 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.

It 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. The term 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."

The bill 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.

The bill provides 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.

The bill also:

- Repeals s. 626.872, F.S., creating temporary licenses for all-lines adjusters.
- Clarifies that only authorized insurers or adjusting firms contracted with authorized insurers may designate emergency adjusters for temporary licensure by the DFS during a catastrophe.
- Requires adjusters to maintain records relating to claims for 5 years instead of the current 3 years.

Public Adjusters (Sections 5, 12)

The bill repeals the restrictions in s. 626.854(6), F.S., on public adjuster solicitations within 48 hours after an event that may be the subject of an insurance claim.

The bill 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.

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

The bill 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.

The bill 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.

Current law requires a public adjuster apprentice to serve as a public adjuster apprentice for 1 year before becoming a public adjuster. The bill reduces the time to 6 months.

Public Adjuster Apprentices (Sections 6, 8, 13)

The bill repeals the current law creating the license for public adjuster apprentices. The bill defines 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. The bill provides 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 bond¹¹ 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 1 year after termination of the appointment.

¹¹ 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.

The bill 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.

The bill removes the limitation on solicitation of contracts by public adjuster apprentices.

Miscellaneous Provisions

Section 9 amends s. 626.8584, F.S., to provide that a nonresident all-lines adjuster can be appointed by a public adjuster or a public adjusting firm.

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.

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 needed.

Section 21 makes 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:

Unknown.

C. Government Sector Impact:

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

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.