

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 911 Insurance Adjusters
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Peterson	Luczynski

SUMMARY ANALYSIS

Chapter 626, F.S., regulates insurance field representatives and operations. Part VI of the chapter governs insurance adjusters. Current law provides for five categories of adjuster license: public adjuster, all-lines adjuster, temporary license (all-lines adjuster), public adjuster apprentice, and catastrophe or emergency adjuster. A licensed all-lines adjuster may be appointed as an independent adjuster, or company employee adjuster. An "all-lines adjuster" is defined as a person who acts on behalf of an insurer to determine the amount of and settle a claim. In addition, the 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 eliminates licensure for public adjuster apprentices, substituting instead a requirement to be licensed as an all-lines adjuster and appointed as a public adjuster apprentice, and requires licensure for adjusting firms. The bill also eliminates the temporary license, which is not currently used. The bill revises the requirements for public adjusters to: expressly prohibit unlicensed public adjusting that is done directly or indirectly; delete a provision of law held unconstitutional by the Florida Supreme Court; exclude deductibles from the calculation of an adjuster's fee; and reduce 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 bill does not appear to have a fiscal impact on state or local government.

The bill provides for an effective date of January 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 626, F.S., regulates insurance field representatives and operations. Part VI of the chapter governs insurance adjusters. Licensure and enforcement of laws regulating insurance adjusters is the responsibility of the Division of Insurance Agents and Agencies Services, within the Department of Financial Services (DFS).

Current law provides for five categories of adjuster license: public adjuster, all-lines adjuster, public adjuster apprentice, temporary license (all-lines adjuster), and catastrophe or emergency adjuster. A licensed all-lines adjuster may be appointed as an independent adjuster, or company employee adjuster, but not concurrently as both.¹ An “all-lines adjuster” is defined as a person who acts on behalf of an insurer to determine the amount of and settle a claim (adjust).² An “independent adjuster” is defined as a person who is licensed as an all-lines adjuster and who is self-appointed or works for an independent adjusting firm to adjust claims.³ A “company adjuster” is defined as a person who is licensed as an all-lines adjuster and who is appointed and employed by an insurer to adjust claims.⁴

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

Current law authorizes, but does not require licensure of adjusting firms, unless the person operating the firm fails to designate a primary adjuster within 30 days of starting the firm or changing the primary adjuster.⁵ In that case, the DFS may compel licensure. Licensure requires an application and payment of a \$60 license fee, and is valid for 3 years.⁶ The law provides grounds for mandatory and discretionary denial, suspension, or revocation of an adjusting firm license.⁷ Currently, there are no licensed adjusting firms.⁸

The Effect of the Bill on Adjusting Firms

The bill requires licensure of all adjusting firms consistent with the requirements applicable to insurance agencies. A branch location is not required to be licensed provided it operates under the same name and federal tax identification number of the licensed firm and the DFS has been given the name of its primary adjuster and specified contact information for the branch firm. The bill revises the penalties applicable for failure to obtain a firm license to specifically authorize a penalty for a first-time violation of up to \$2,500. The bill repeals the licensure fee. Thus, future licenses will be issued at no charge and will be valid in perpetuity, unless cancelled, suspended or revoked by the DFS or terminated by operation of law (e.g., failing to update the designated primary adjuster).

¹ s. 626.864, F.S.

² s. 626.8548, F.S.

³ s. 626.855, F.S.

⁴ s. 626.856, F.S.

⁵ s. 626.8695(6), F.S.

⁶ s. 624.501, F.S.

⁷ s. 626.8697, F.S.

⁸ Email from Greg Thomas, Director, Division of Insurance Agent & Agency Services, Florida Department of Financial Services, RE: HB 911 (Mar. 16, 2017).

The bill revises the requirements for an adjusting firm license application. Third parties may complete and submit the application, but the applicant remains responsible for its content. An application must:

- Be written;
- Be signed by a principal;
- Include the names of all principals (e.g., owner, partner, officer, director, senior manager);
- Include specified contact information;
- Include the name of the primary adjuster;
- Include fingerprints for all named principals and individuals who have management or control of a corporation that is not publicly-traded; and
- Include such other information as deemed necessary to ascertain the trustworthiness and competence of the named principals and required by rule of the DFS.

The bill revises the requirements for designating primary adjusters, which are required for each business location of an adjusting firm (principal and branch). The primary adjuster must be:

- Licensed and appointed to adjust the type of claims adjusted at the business location;
- Clarifies the primary adjuster's responsibilities for misconduct or code violations occurring at the business location; and
- Specifies that an adjusting firm license expires if the primary adjuster leaves and a replacement is not designated within 90 days.

Public Adjuster Apprentices (Sections 2, 6 – 9, 11, 13)

Current law requires licensure as a public adjuster apprentice. To become licensed, an 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. A public adjusting firm may not appoint more than 12 apprentices concurrently; a supervising adjuster may not be responsible for more than 3 apprentices simultaneously. A public adjuster apprentice license is valid for 18 months.

Effect of the Bill on Public Adjuster Apprentices

The bill eliminates licensure for public adjuster apprentices, substituting instead licensure as an all-lines adjuster and appointment by a public adjuster or a public adjusting firm. In addition, the bill eliminates the requirement for a public adjuster apprentice to work under the supervision of a public adjuster for 12 months before becoming eligible for licensure as a public adjuster. Instead, that period is reduced to 6 months continual appointment as a public adjuster apprentice. Finally, the bill reduces to four the number of public adjuster apprentices that may be appointed by a firm concurrently and reduces to one the number of public adjuster apprentices that may be supervised by a public adjuster simultaneously. Thus, while the bill shortens the timeframe for a person to move from apprentice to public adjuster, the bill restructures the supervision that occurs during that period to allow for more focused attention.

Public Adjuster (Sections 5, 12)

A public adjuster is hired and paid by the policyholder to act on his or her behalf in a claim the policyholder files against an insurance company. Public adjusters can represent a policyholder in any type of insurance claim, not just property insurance claims. Public adjusters, unlike company employee adjusters, operate independently and are not affiliated with any insurance company. Independent and company employee adjusters work for insurance companies.

Public adjusters are licensed by the DFS if they meet the statutory qualifications for licensure set forth in law.⁹ Qualifications include age, residency, testing, experience, and trustworthiness. Public adjusters must also present a \$50,000 bond to the DFS in order to be licensed.¹⁰

Current law provides numerous restrictions and parameters on activities of public adjusters.¹¹ Administrative rules also address public adjuster activities.¹² Public adjuster activities addressed by current law include: advertisement and solicitation, referrals, referral fees, loans to clients or prospective clients, notice of property loss claims, acceptance of a power of attorney relating to the choice of a repair contractor, and allowing access to damaged property by other parties involved in the claim.¹³

Generally, public adjusters are paid a percentage of the claim payment.¹⁴ The public adjuster fee percentage is usually negotiated between the public adjuster and the policyholder, except in residential property and condominium unit owner property claims, including claims filed against Citizens Property Insurance Corporation.¹⁵ For these claims, public adjuster fees are limited by law to not more than a specified percentage which varies depending on whether the claim is hurricane or non-hurricane related and if the claim is hurricane-related, depending on how soon after the hurricane the claims is filed.¹⁶ In addition, for supplemental or reopened claims for residential property or condominium unit owners, the public adjuster fee cannot be based on the amount paid to the policyholder on the previous claim.¹⁷

Effect of the Bill on Public Adjusters

The bill:

- Prohibits individuals from directly or indirectly performing the duties of a public adjuster or soliciting, investigating, or adjusting claims on behalf of a public adjuster, unless licensed. There have been anecdotal reports of individuals serving as “loss consultants” in claims involving an assignment of benefits. These individuals allegedly solicit claims, but are not licensed as an adjuster. The DFS has indicated that current law is inadequate to permit enforcement of these violations because it does not expressly address indirect solicitation.
- Repeals language that prohibits a public adjuster from contacting a policyholder within 48 hours of an occurrence that might be the basis of an insurance claim. This provision was declared unconstitutional by the Supreme Court in 2012 as unduly restricting the commercial speech of public adjusters.¹⁸
- Permits a policyholder to cancel a public adjuster contract by any means, not just by phone or in writing as is currently allowed by law.
- Prohibits a public adjuster from charging a fee that is based on the policy deductible portion of a claim.
- Prohibits a public adjuster, a public adjuster apprentice, or any person working on behalf of a public adjuster from contracting for salvage or any other repair related to an insurance claim.

⁹ s. 626.865, F.S.

¹⁰ s. 626.865(2), F.S.

¹¹ Laws enacted in 2008 (Ch. 2008-220, Laws of Fla.), in 2009 (Ch. 2009-87, Laws of Fla.), and 2011 (Ch. 2011-39, Laws of Fla.) provided significant changes relating to public adjusters.

¹² Rule 69B-220.201(4) and (5), F.A.C.

¹³ s. 626.854(8), (9), (10), (13), (14), (15), and (18), F.S.

¹⁴ Public adjuster fee restrictions are found in s. 626.854(11), F.S.

¹⁵ See s. 626.854(19), F.S., applying the fee restrictions in s. 626.854, F.S., to residential property and condominium unit owner insurance policies, only. The Legislature first restricted fees charged by public adjusters in property insurance in 2008 and made further changes in 2011.

¹⁶ s. 626.854(11) and (19), F.S.

¹⁷ s. 626.854(11)(a), F.S.

¹⁸ *Atwater v. Kortum*, 95 So. 3rd 85 (Fla. 2012).

This expands the current law prohibition, which is limited to contracts for repair, and further limits the opportunity for self-dealing.

- Prohibits any person who is not licensed as a public adjuster or otherwise exempt from licensure from directly or indirectly performing the duties of or advertising for employment as a public adjuster. This is language that is typical of professional practice acts and, in combination with the language that tightens up the definition of public adjuster, may assist the DFS in enforcement actions against “loss consultants” (described above) and similar violators.
- Reduces from 1 year to 6 months the time an all-lines adjuster must be licensed and appointed as an independent adjuster, company adjuster, or public adjuster apprentice before becoming eligible for licensure as a public adjuster.

Miscellaneous Provisions

The bill:

- Allows employees of insurers to handle residential property insurance claims that are subject to a coverage limit in the policy of \$500 or less. **(Section 10)**
- Repeals the temporary adjuster license and authority for the DFS to create a pool of adjusters for use during emergencies, neither of which is currently used. Temporary licenses are needed, generally, only in the context of hurricanes and other catastrophic events. There is a separate licensing category for catastrophe or emergency adjusters.¹⁹ Thus, the temporary license is not required and the authority to create emergency pools of adjusters is not needed. **(Sections 16, 20)**
- Clarifies that only authorized insurers or adjusting firms contracted with authorized insurers may designate emergency adjusters for temporary licensure by the DFS during an emergency. **(Section 17)**
- Changes the required retention for adjuster claim records from 3 years to 5 years to align with other provisions of the insurance code. **(Section 18)**
- Addresses potential conflicts of interest by prohibiting concurrent licensure as an all-lines adjuster and a public adjuster and prohibiting concurrent appointment as an independent, company employee, or public adjuster apprentice. **(Section 19)**

B. SECTION DIRECTORY:

- Section 1:** Amends s. 624.501, F.S., relating to filing, license, appointment, and miscellaneous fees.
- Section 2:** Amends s. 626.015, F.S., relating to definitions.
- Section 3:** Amends s. 626.022, F.S., relating to scope of part.
- Section 4:** Amends s. 626.112, F.S., relating to license and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents.
- Section 5:** Amends s. 626.854, F.S., relating to “public adjuster” defined; prohibitions.
- Section 6:** Repeals s. 626.8541, F.S., relating to public adjuster apprentice.
- Section 7:** Amends s. 626.8548, F.S., relating to “all-lines adjuster” defined.
- Section 8:** Creates s. 626.8561, F.S., relating to “public adjuster apprentice” defined.
- Section 9:** Amends s. 626.8584, F.S., relating to “nonresident all-lines adjuster” defined.
- Section 10:** Amends s. 626.861, F.S., relating to insurer’s officers, insurer’s employees, reciprocal insurer’s representatives; adjustments by.
- Section 11:** Amends s. 626.864, F.S., relating to adjuster license types.
- Section 12:** Amends s. 626.865, F.S., relating to public adjuster’s qualifications, bond.
- Section 13:** Amends s. 626.8651, F.S., relating to public adjuster apprentice license; qualifications.
- Section 14:** Amends s. 626.8695, F.S., relating to primary adjuster.

¹⁹ s. 626.874, F.S.

- Section 15:** Amends s. 626.8696, F.S., relating to application for adjusting firm license.
- Section 16:** Repeals s. 626.872, F.S., relating to temporary license.
- Section 17:** Amends s. 626.874, F.S., relating to catastrophe or emergency adjusters.
- Section 18:** Amends s. 626.875, F.S., relating to office and records.
- Section 19:** Amends s. 626.876, F.S., relating to exclusive employment; public adjusters, independent adjusters.
- Section 20:** Repeals s. 626.879, F.S., relating to pools of insurance adjusters.
- Section 21:** Amends s. 626.9953, F.S., relating to qualifications for registration; application required.
- Section 22:** Provides an effective date of January 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The DFS estimates collecting a nominal sum (\$2,500) in penalties from adjusting firms that fail to obtain an adjusting firm license.

2. Expenditures:

The DFS may incur minor costs associated with enforcement of the adjusting firm license requirement and the express prohibition on direct or indirect adjusting. The DFS anticipates receiving approximately 3,000 – 4,000 applications for adjusting firm licenses. It anticipates that the applications will be very clean and straightforward. It has determined not to charge a fee because the license requirement is a one-time requirement and the licensing structure is consistent with the licensing structure applicable to insurance agencies. As such, the DFS staff is adequately trained to process the small volume of applications with limited impact to operations. Regardless, the DFS anticipates an offsetting reduction in staff time by the other provisions in the bill which eliminate the public adjuster apprentice license. This license type contains requirements that differ from those of other adjuster licenses and, as a result, requires more individual monitoring outside of the regular license system. Thus, the DFS anticipates the bill will have no financial impact on its operations.²⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Principals of entities that apply for licensure as an adjusting firm and who are not currently licensed and appointed under the chapter will incur the cost of undergoing a criminal history record check. Section 624.34, F.S., authorizes the Florida Department of Law Enforcement to conduct background screenings as may be required under the insurance code. Currently, the cost for a state and national criminal history record check, as authorized by s. 624.34, F.S., is \$36. Of that amount, \$24 is for the state portion of the criminal history record check and \$12 is for the national portion (Federal Bureau of Investigation) of the criminal history record check.²¹

²⁰ Email from Greg Thomas, Director, Division of Insurance Agent & Agency Services, Florida Department of Financial Services, RE: HB 911 (Mar. 16, 2017).

²¹ Florida Department of Law Enforcement, Agency Analysis of 2017 House Bill 911, p. 4 (Feb. 27, 2017).

D. FISCAL

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the DFS to adopt a rule to specify any additional information not provided in statute that it needs to determine the trustworthiness and competence of principals who are listed on an adjusting firm license application.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES