

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/SB 1098

INTRODUCER: Banking and Insurance Committee and Senator Fasano

SUBJECT: Insurance Adjusters

DATE: March 24, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Daniell</u>	<u>Maclure</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	<u>CJ</u>	_____
4.	_____	_____	<u>GA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input 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 changes pertaining to the regulation of public adjusters and proposes a new type and class of license for a “public adjuster apprentice” under the authority of the Department of Financial Services (DFS or department). This legislation is recommended by the Task Force on Citizens Property Insurance Claims Handling and Resolution, which was created by the Legislature in 2007. 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 bill provides for the following changes to ch. 626, F.S.:

Fees:

- Prohibits charging a fee unless a written contract was executed prior to payment of the claim and the adjuster provided adjusting services on the claim.
- Prohibits charging more than:
 - 15 percent on non-hurricane claims,
 - 10 percent on initial hurricane claims,
 - 15 percent on re-opened/supplemental hurricane claims.

- Prohibits basing a fee for work on a supplemental hurricane claim on the amount paid to the policyholder on the initial claim.

Prohibited Practices:

- Soliciting directly or indirectly between the hours of 9 p.m. and 8 a.m.
- Soliciting or entering into a contract until at least 72 hours after occurrence of the loss or 14 business days in the event of a hurricane, unless contacted by policyholder.
- Giving or offering to give a monetary loan or advance to a client or prospective client.
- Giving or offering to give anything with a value in excess of \$25 for advertising or as an inducement to enter into a contract with a public adjuster.

Qualifications for Licensure:

- Resident applicants must have two years of experience (in the past four year) in adjusting claims as a licensed and appointed insurance agent, or as an all-lines or property and casualty independent adjuster or company employee adjuster; completed 12 semester hours or 18 quarter hours of college level credits in property/casualty insurance courses; or completed 12 months of employment as a public adjuster apprentice.
- All applicants must pass the public adjuster exam.
- Nonresident applicants must have been continuously licensed in their home state for the past three years.

Examination for Licensure:

- Requires DFS to create a specific examination for public adjusters.
- Requires passage of the examination before reinstatement of a suspended license or issuance of a new license to a person whose previous license was terminated for any reason.
- Requires nonresident adjusters to pass Florida's exam.

Continuing Education Requirements:

- Must take courses that are specifically designed for public adjusters, not company adjusters.
- Courses must include information on duties and responsibilities under law and rules of the department as well as on standard policy forms.
- Nonresident adjusters can comply by meeting their own state's continuing education requirements.

Contracts:

- The contract must contain a statement that notifies consumers that it is a third-degree felony to knowingly and with intent to injure, defraud, or deceive any insurer, file a statement of claim or proof of loss containing any false, incomplete, or misleading information.

- Consumers can terminate a contract with a public adjuster without penalty within three business days from the execution of the contract or within three business days from the date the claim is reported to the insurer, whichever is later.

Proof of Loss Certification:

- Requires public adjusters to sign a statement under oath certifying that estimates in proof of loss are reasonable and that the proof of loss does not contain any false, incomplete, or misleading information.
- Preparation of a proof of loss that contains false, misleading, or incomplete information with intent to defraud is a felony pursuant to s. 817.234, F.S.

The bill also creates a new type and class of license for a public adjuster apprentice. The bill creates the following requirements for public adjuster apprentices:

- The applicant must have experience or education concerning the adjusting of damages or losses.
- The applicant must file a surety bond in the amount of \$50,000 with DFS.
- A supervisor is responsible and accountable for the acts of the apprentice related to claims adjusting.
- The apprentice must complete a minimum 100 hours of employment per month for 12 months of employment as a public adjuster apprentice.

This bill substantially amends the following sections of the Florida Statutes: 624.501, 626.015, 626.221, 626.241, 626.641, 626.854, 626.865, 626.869, 626.8698, 626.870, and 626.8732. The bill creates the following sections of the Florida Statutes: 626.8541, 626.8651, 626.8796, and 626.8797.

II. Present Situation:

Task Force on Citizens Property Insurance Claims Handling and Resolution

During a 2007 Special Session, the Legislature enacted House Bill 1A,¹ which created and 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).²

¹ Chapter 2007-1, Laws of Fla.

² TASK FORCE ON CITIZENS PROPERTY INSURANCE CLAIMS HANDLING AND RESOLUTION, FLA. DEP'T OF FINANCIAL SERVS., *Purpose and Intent*, <http://taskforceoncitizensclaimshandling.org/Default.htm> (last visited March 20, 2008). The Task Force is composed of seven members, four of whom are appointed by the Governor, Chief Financial Officer, President of the Senate, and Speaker of the House of Representatives. The rest of the members are the Commissioner of Insurance Regulation, or designee; Insurance Consumer Advocate, or designee; and Executive Director of Citizens Property Insurance Corp., or designee. *Id.* at <http://taskforceoncitizensclaimshandling.org/Excerpt.htm> (last visited March 20, 2008). The Task Force has held nine meetings and one informal workshop. See *id.* at <http://taskforceoncitizensclaimshandling.org/Meetings.htm> (last visited March 20, 2008).

During review of Citizens hurricane claims, the Task Force became aware of the impact that public adjusters have on the claims process. For example, representatives with Citizens testified that of their 3,300 open claims that were in mediation or appraisal,³ 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, in that they were not conversant with construction, building codes, or other technical knowledge critical to adjusting a claim. Also, these adjusters charged exorbitant fees that oftentimes were not apparent to insureds because such fees were not prominently displayed in the public adjuster contract. Stakeholders further testified that there was a need for an apprentice type program for public adjusters so that individuals would be knowledgeable and experienced when they became public adjusters. In an effort to remedy concerns expressed about these abuses, the Task Force has proposed this legislation.

Regulation of Public Adjusters

Part VI, ch. 626, F.S., regulates insurance adjusters, which includes public adjusters, independent adjusters, and company employee adjusters. Statute defines these terms as follows:

- 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.⁵
- 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.⁶

Public adjusters are employed exclusively by a policyholder who has sustained an insured loss. They normally 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 adjusters are licensed by the Department of Financial Services after meeting pre-licensing requirements, which include submitting an application, paying required fees, complying with requirements as to knowledge, experience, or instruction,

³ As of June 18, 2007. See TASK FORCE ON CITIZENS PROPERTY INSURANCE CLAIMS HANDLING AND RESOLUTION, FLA. DEP’T OF FINANCIAL SERVS., *Second Interim Report*, available at <http://taskforceoncitizensclaimshandling.org/images/SecondInterimReport.Revised%2010.11.07.pdf> (last visited March 20, 2008).

⁴ Section 626.854, F.S.

⁵ Section 626.855, F.S.

⁶ Section 626.856, F.S.

and submitting fingerprints.⁷ The Department of Financial Services states that the number of licensed public adjusters has dramatically increased since the hurricanes of 2004-2005. In 2004, there were approximately 723 Florida resident licensed public adjusters, and in 2008, there are 2,414 resident licensed public adjusters.⁸

III. Effect of Proposed Changes:

The bill increases the requirements for public adjusters and proposes a new type and class of license for a “public adjuster apprentice” under the administrative authority of the Department of Financial Services (DFS).

Section 1

The bill amends s. 624.501, F.S., relating to filing fees for all insurance representatives (insurance agents, adjusters, etc.), to require such representatives to pay a \$50.00 filing fee to DFS when applying to reinstate a suspended license. Currently, suspended licensees must request a reinstatement in writing and pay a \$5.00 reinstatement fee.

Section 2

Section 626.015, F.S., is amended to expand the definition of the term “adjuster” to include a “public adjuster apprentice” as defined in s. 626.8541, F.S. (Section 7 below).

Section 3

The bill amends s. 626.221, F.S., relating to insurance agent examination requirements. Under current law, suspended adjusters (e.g., public, company employee, and independent adjusters) are exempt from taking a written examination when requesting reinstatement of their license. The bill removes the exemption for public adjusters so that public adjusters will now have to pass a written examination before reinstatement of a suspended license or appointment when the license was suspended within four years prior to the date of application for reinstatement. Also, the examination requirement applies to public adjusters if an application for licensure is filed within 48 months following cancellation or expiration of the prior appointment or license.

Section 4

The bill amends s. 626.241, F.S., to require DFS to create an examination for applicants seeking licensure as public adjusters and a separate licensing examination for company employee adjusters and independent adjusters. The intent of this provision is for DFS to create exams to reflect the differences between adjusting claims for an insurer and adjusting claims for an insured. Currently, according to DFS, company employee, independent, and public adjuster examinations contain questions related to the same material.

⁷ See generally s. 626.865, F.S.

⁸ There are 395 licensed non-resident public adjusters. According to DFS, there are 14,948 licensed resident independent adjusters (9,494 licensed non-resident independent adjusters); 15,756 licensed resident company employee adjusters (25,045 licensed non-resident company employee adjusters).

Section 5

Section 626.641, F.S., is amended to clarify that suspended insurance licensees will not be reinstated except upon “the filing and approval of an application” for reinstatement by DFS. The bill makes a cross reference to public adjuster apprentices under s. 626.8698, F.S., to provide that an application for reinstatement by apprentices is subject to denial and a waiting period prior to approval on the same grounds that apply to applications for licensure.

Section 6

Under current law, there are several prohibitions against specified public adjuster activities, e.g., public adjusters may not give legal advice or act on behalf of any person in negotiating a claim related to bodily injury, death, or noneconomic damages. The bill amends s. 626.854, F.S., to provide additional prohibitions/guidelines that public adjusters must follow and, if violated, constitute grounds for disciplinary action. The prohibited practices and guidelines are as follows:

- A public adjuster may not directly or indirectly through any other person or entity solicit an insured or claimant by any means between the hours of 9 p.m. and 8 a.m.;
- A public adjuster may not directly or indirectly through any other person or entity engage in face-to-face or telephonic solicitation or enter into a contract with any insured or claimant under a policy until at least 72 hours after the occurrence of an event that may be the subject of a claim under a policy, unless contact is initiated by the insured or claimant;
- A client may cancel a public adjuster’s contract within three business days after the date on which the contract is executed or within three business days after the date on which the client has notified the insurer of the claim, either by phone or in writing, whichever is later.⁹ However, when the event is a hurricane, this provision applies for a period of 14 business days. The public adjuster must disclose to the client his or her right to cancel the contract and advise that the cancellation notice must be in writing and sent by certified mail, return receipt requested, or other form of mailing which provides proof, to the public adjuster at the address in the contract;
- It is an unfair or deceptive practice under s. 626.9541, F.S., for a public adjuster to disseminate an advertisement or statement containing a statement pertaining to insurance which is untrue, deceptive, or misleading;
- A public adjuster, public adjuster apprentice, or person acting on their behalf may not offer or give a monetary loan or advance to a client or prospective client; such persons may not give any article of merchandise having a value in excess of \$25 to any person for the purpose of advertising or as an inducement to enter a contract with a public adjuster;
- A public adjuster may not charge or accept any compensation, payment or thing of value for any claim under a residential or commercial residential property insurance policy:
 - Based on any claim payments for additional living expenses;
 - Based on the amount of a claim payment or offer by the insurer which happened before the date on which the adjuster and insured executed a contract pertaining to the claim;

⁹ Under Rule 69B-220.201(4)(g), F.A.C., a consumer currently has three days to terminate a contract with a public adjuster.

- Greater than 15 percent of an insurance claim payment on non-hurricane claims; or
- Greater than 10 percent of an insurance claim payment for claims based on or made subsequent to a hurricane; except that if a public adjuster and insured have a contract providing for the adjuster to reopen a supplemental claim seeking additional payments on behalf of the insured for a claim that has been previously paid or settled, the amount may be up to 15 percent of the amount of the claim payment made by the insurer after the date of the execution of the contract to reopen or file a supplemental claim.
- If a public adjuster enters into a contract to reopen a claim that has been previously paid, the adjuster cannot base any compensation on the previous settled claim.

Section 7

The bill creates s. 626.8541, F.S., which defines the term “public adjuster apprentice” to mean any individual who is employed by a licensed and appointed all-lines public adjuster in good standing with DFS or a public adjusting firm that employs at least one licensed and appointed all-lines public adjuster in good standing to assist an all-lines public adjuster in conducting business under the license and who satisfies the requirements of s. 626.8651, F.S. (Section 9 below).

Section 8

Under current law, public adjusters must have “sufficient experience, training, or instruction” concerning adjusting claims, be informed as to insurance contracts, and possess “adequate knowledge of the laws of this state.” They must also pass a written examination.

Section 626.865, F.S., is amended to increase the requirements an applicant must meet to qualify for a public adjuster license. A public adjuster applicant must meet *one* of the following requirements prior to taking the written examination:

- Have two years of experience within the past four years involving the adjusting of damage or losses under insurance contracts, other than life and annuity contracts, as a licensed and appointed general lines agent or as a licensed and appointed all-lines or property and casualty company employee adjuster or independent adjuster;
- Successfully complete 12 semester hours or 18 quarter hours at an accredited institution of higher learning; or
- Complete 12 months of employment as a public adjuster apprentice.

Current law provides that an individual requesting reinstatement within four years after a suspension, termination, or cancellation of a public adjuster license is not required to take the examination.

Under the bill, DFS is prohibited from issuing a public adjuster’s license to an individual who has not passed the public adjuster examination. Persons applying for reinstatement of their public adjuster license after being suspended, or persons applying for a new license after termination, cancellation, revocation, or expiration of a prior license as a public adjuster, must pass the

written public adjuster examination required for licensure after their application is approved regardless of whether the applicant passed an exam prior to the issuance of the license that was suspended, terminated, cancelled, revoked, or expired.

Section 9

The bill creates s. 626.8651, F.S., pertaining to qualifications for a public adjuster apprentice (apprentice) license. To be approved by DFS for an apprentice license, an applicant must be 18 years of age, a U.S. citizen or legal alien, be trustworthy and have a good business reputation, and have sufficient experience, training, or instruction concerning adjusting damages or losses under insurance contracts and possess knowledge of relevant laws. The bill authorizes DFS to adopt rules under this provision.

The apprentice application must have an affidavit verifying proposed employment information, and such employer must be a licensed and appointed public adjuster in good standing with DFS. The applicant must pay relevant fees, file a \$50,000 performance bond in favor of DFS, and complete a minimum 100 hours of employment per month for 12 months of employment under the supervision of an all-lines public adjuster to qualify for licensure as a public adjuster.

The apprentice license is effective for 18 months unless it expires or is surrendered, terminated, suspended, revoked, or cancelled. The Department of Financial Services is prohibited from issuing an apprentice license to an individual who has held a license within two years after expiration, surrender, termination, revocation, or cancellation of the license. After completing 12 months of employment, the licensee may file an application for a public adjuster license, and the applicant and supervising adjuster or adjusting firm must each file a sworn affidavit verifying employment. The apprentice has the same authority as a licensed public adjuster or adjusting firm, except the apprentice may not execute contracts for services of a public adjuster or firm and may not solicit contracts except under the direct supervision of the supervisory public adjuster. An individual may not act as an apprentice unless he or she is licensed and holds a current appointment by a licensed public all-lines adjuster or adjusting firm that employs a licensed all-lines public adjuster.

Section 10

Current law requires public adjusters to meet similar continuing education (CE) requirements and courses as company employee and independent adjusters.¹⁰ Under the bill, public adjusters must take DFS-approved courses that cover the laws and rules relating to the duties and responsibilities of public adjusters including appropriate policy forms. The bill provides that a nonresident adjuster satisfies Florida's CE requirements if he or she has met the CE requirements of his or her home state and that state gives credit to Florida residents on the same basis. A nonresident agent whose home state does not have a CE requirement equivalent to Florida's must meet Florida's CE requirements.

¹⁰ Except that public adjusters take courses which cover "all lines of insurance other than life and annuities," while courses for company employee and independent adjusters cover "current insurance laws." Adjusters must complete 24 hours of course work (two hours of which relate to ethics) every two years.

Section 11

The bill amends s. 626.8698, F.S., by applying the disciplinary guidelines for public adjusters to public adjuster apprentices.

Section 12

The bill amends s. 626.870, F.S., relating to adjuster license applications, to provide that a license, appointment, or eligibility that has been suspended cannot be reinstated except upon the filing and approval of an application for reinstatement. In addition, for public adjusters to be reinstated, they must pass a public adjuster licensing examination and must submit an application with an examination fee. The bill provides that the license denial provisions in current law apply to applications for reinstatement.

Section 13

The bill amends s. 626.8732, F.S., pertaining to requirements for qualifications as a nonresident public adjuster. In addition to current statutory requirements, to qualify as a nonresident public adjuster, a person must:

- Have been licensed and employed as a public adjuster in his or her home state on a continual basis for the past three years; or
- If the applicant's home state does not issue public adjuster licenses, the applicant must have been licensed and employed as a resident insurance company or independent adjuster, insurance agent, insurance broker, or other insurance representative in his or her home state or another state for the past three years on a continual basis. This provision does not apply to individuals licensed to transact life insurance and annuity business.

The Department of Financial Services shall verify the nonresident applicant's licensing status through the producer database maintained by the National Association of Insurance Commissioners.

Section 14

Section 626.8796, F.S., is created to require that all contracts for public adjusting services be in writing and must display the following statement on the first page of the contract: "Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or proof of loss containing any false, incomplete, or misleading information commits a felony of the third degree."

Section 15

The bill creates s. 626.8797, F.S., requiring public adjusters to sign a statement under oath given by a notary public, which certifies that estimates contained in a proof of loss form are reasonable and that a proof of loss form does not contain any false, incomplete, or misleading information. The statement must be printed or added to a proof of loss form by the public adjuster. The bill further states that pursuant to s. 817.234, F.S. (the false and fraudulent insurance claims

provision), any person who with intent to injure, defraud, or deceive an insurer and who prepares a proof of loss form in support of a claim under an insurance policy and knowing that the proof of loss contains false, misleading, or incomplete information concerning any fact or material thing, commits a third-degree felony, punishable under ss. 775.082, 775.803, or 775.084, F.S.

Section 16

The bill provides that except as otherwise provided, this act will take effect on January 1, 2008.

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:

Insureds who employ public adjusters will benefit due to the consumer protections offered under the bill such as the capping of adjuster fees and prohibitions against soliciting. Persons applying for a public adjuster license will have to meet more stringent requirements under the bill, and persons applying for reinstatement of their license will have to pay an additional fee. Also, persons currently licensed as public adjusters will have to sign a statement under oath for proof of loss, limit their fees, adhere to anti-soliciting provisions, modify contracts to allow consumers to terminate such contracts, and meet other requirements. Finally, individuals desiring to be public adjuster apprentices must file a \$50,000 bond with the Department of Financial Services, pay fees, and meet other criteria for licensure.

C. Government Sector Impact:

The Department of Financial Services provided the following fiscal impact statement:

I. FISCAL IMPACT ON STATE AGENCIES:

		(FY 08-09) Amount	(FY 09-10) Amount	(FY 10-11) Amount
A.	Revenues	NONE		
	1. Recurring:			
	Trust Fund:		\$38,500*	\$38,500*
	General Revenue:			
	2. Non-recurring:			
	Trust Fund:			
	General Revenue:			
B.	Expenditures		NONE	NONE
	1. Recurring			
	Trust Fund:			
	General Revenue:			
	2. Non-Recurring			
	Trust Fund:	OPS/Contract Services	\$129,770**	
		OPS/Contract Services	\$31,000***	
		Total	\$160,770	

*The \$38,500 in recurring trust fund revenue is based on an estimated 700 public adjusters apprentice applications being received annually with fees of \$55 (\$50 application fee and \$5 license appointment fee) (700 X \$55 = \$38,500).

** The \$129,770 in non-recurring trust fund expenditures represents the estimated cost to upgrade the DFS computer systems in order to implement the proposed legislation.

*** The \$31,000 in non-recurring trust fund expenditures represents the estimated cost to develop unique public adjuster examinations.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **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 March 11, 2008:

The committee substitute:

- Clarifies that a public adjuster apprentice must work under an “all-lines” adjuster rather than an adjuster that is licensed only to adjust workers’ compensation claims or automobile claims.
- Provides that a public adjuster apprentice must work at least 100 hours each month to meet the bill’s requirement for 12 months of work as an apprentice.
- Deletes the term “person” and inserts “individual” to clarify that a public adjuster is an individual and not a corporation or other entity.
- Deletes the term “days” and insert “business days” for purposes of the waiting period for solicitation by public adjusters after a hurricane.
- Includes the expiration of an apprentice license as one of the reasons why a license may not be valid for the 18-month period provided for in the bill.
- Provides that an individual may not act as a public adjuster apprentice unless the individual is licensed and holds an appointment.
- Clarifies language pertaining to nonresident adjusters and reinstatement of a public adjuster’s license.
- Provides a delayed effective date for certain provisions in the bill to allow DFS time to develop procedures, create new exams, develop education courses, and adopt rules mandated under the bill.
- Removes duplicative language pertaining to maximum fees that may be charged by public adjusters.

B. Amendments:

None.