

CHAPTER 2017-147

Committee Substitute for Committee Substitute for House Bill No. 911

An act relating to insurance adjusters; amending s. 626.015, F.S.; conforming a cross-reference; amending s. 626.854, F.S.; redefining the term “public adjuster”; deleting a certain prohibited act of a public adjuster; deleting a provision specifying the method for an insured or claimant to provide certain notice to an insurer; providing construction relating to certain limitations on insurance claim payments and public adjuster compensation; revising a prohibition against certain entities relating to a contract or power of attorney that vests certain authority in a property insurance claim; conforming a cross-reference; prohibiting persons from conducting certain activities relating to insurance claims; providing an exception for attorneys and public adjusters; repealing s. 626.8541, F.S., relating to public adjuster apprentices; amending s. 626.8548, F.S.; redefining the term “all-lines adjuster”; creating s. 626.8561, F.S.; defining the term “public adjuster apprentice”; amending s. 626.8584, F.S.; redefining the term “nonresident all-lines adjuster”; amending s. 626.861, F.S.; revising construction relating to employees of an insurer; amending s. 626.864, F.S.; revising the permissible appointments of all-lines adjusters; amending s. 626.865, F.S.; revising the qualifications for licensure for public adjusters; amending s. 626.8651, F.S.; requiring public adjuster apprentices to be appointed, rather than licensed, by the department; specifying qualifications for such appointments; revising requirements and limitations for public adjusting firms and public adjusters who supervise public adjuster apprentices; revising certain prohibited acts and exceptions to such acts of public adjuster apprentices; conforming provisions to changes made by the act; amending s. 626.8695, F.S.; revising requirements for designating primary adjusters; redefining the term “primary adjuster”; revising the accountability of a primary adjuster for persons under his or her supervision; revising a prohibition against an adjusting firm location conducting insurance business under certain circumstances; revising procedures for an adjusting firm to determine a person’s current licensure status; repealing s. 626.872, F.S., relating to all-lines adjuster temporary licenses; amending s. 626.874, F.S.; revising conditions for the department to issue adjuster licenses in the event of catastrophes or emergencies; amending s. 626.875, F.S.; revising the minimum time period in a records retention requirement for adjusters; amending s. 626.876, F.S.; revising certain prohibitions relating to exclusive employment of public adjusters, all-lines adjusters, and appointed independent adjusters; repealing s. 626.879, F.S., relating to pools of insurance adjusters; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 626.015, Florida Statutes, is amended to read:

626.015 Definitions.—As used in this part:

(1) “Adjuster” means a public adjuster as defined in s. 626.854, ~~a public adjuster apprentice as defined in s. 626.8541,~~ or an all-lines adjuster as defined in s. 626.8548.

Section 2. Subsections (7) through (19) of section 626.854, Florida Statutes, are renumbered as subsections (6) through (18), respectively, subsection (1) and present subsections (6), (7), (11), (18), and (19) are amended, and a new subsection (19) is added to that section, to read:

626.854 “Public adjuster” defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(1) A “public adjuster” is any person, except a duly licensed attorney at law as exempted under s. 626.860, who, for money, commission, or any other thing of value, directly or indirectly prepares, completes, or files an insurance claim ~~form~~ for an insured or third-party claimant or who, for money, commission, or any other thing of value, acts on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims. The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits, investigates, or adjusts such claims on behalf of a public adjuster, an insured, or a third-party claimant. The term does not include a person who photographs or inventories damaged personal property or business personal property or a person performing duties under another professional license, if such person does not otherwise solicit, adjust, investigate, or negotiate for or attempt to effect the settlement of a claim.

~~(6) A public adjuster may not directly or indirectly through any other person or entity initiate contact or engage in face-to-face or telephonic solicitation or enter into a contract with any insured or claimant under an insurance policy until at least 48 hours after the occurrence of an event that may be the subject of a claim under the insurance policy unless contact is initiated by the insured or claimant.~~

~~(6)(7)~~ An insured or claimant may cancel a public adjuster’s contract to adjust a claim without penalty or obligation within 3 business days after the date on which the contract is executed or within 3 business days after the date on which the insured or claimant has notified the insurer of the claim, ~~by phone or in writing,~~ whichever is later. The public adjuster’s contract must disclose to the insured or claimant his or her right to cancel the contract and advise the insured or claimant that notice of cancellation must be submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, to the public adjuster at

the address specified in the contract; provided, during any state of emergency as declared by the Governor and for 1 year after the date of loss, the insured or claimant has 5 business days after the date on which the contract is executed to cancel a public adjuster’s contract.

~~(10)(a)(11)(a)~~ If a public adjuster enters into a contract with an insured or claimant to reopen a claim or file a supplemental claim that seeks additional payments for a claim that has been previously paid in part or in full or settled by the insurer, the public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value based on a previous settlement or previous claim payments by the insurer for the same cause of loss. The charge, compensation, payment, commission, fee, or any other thing of value must be based only on the claim payments or settlement obtained through the work of the public adjuster after entering into the contract with the insured or claimant. Compensation for the reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment. In no event shall the contracts described in this paragraph exceed the limitations in paragraph (b).

(b) A public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value in excess of:

1. Ten percent of the amount of insurance claim payments made by the insurer for claims based on events that are the subject of a declaration of a state of emergency by the Governor. This provision applies to claims made during the year after the declaration of emergency. After that year, the limitations in subparagraph 2. apply.

2. Twenty percent of the amount of insurance claim payments made by the insurer for claims that are not based on events that are the subject of a declaration of a state of emergency by the Governor.

(c) Insurance claim payments made by the insurer do not include policy deductibles, and public adjuster compensation may not be based on the deductible portion of a claim.

~~(d)(e)~~ Any maneuver, shift, or device through which the limits on compensation set forth in this subsection are exceeded is a violation of this chapter punishable as provided under s. 626.8698.

~~(17)(18)~~ A public adjuster, a public adjuster apprentice, or a person acting on behalf of an adjuster or apprentice may not enter into a contract or accept a power of attorney that vests in the public adjuster, the public adjuster apprentice, or the person acting on behalf of the adjuster or apprentice the effective authority to choose the persons or entities that will perform repair work in a property insurance claim or provide goods or services that will require the insured or third-party claimant to expend

funds in excess of those payable to the public adjuster under the terms of the contract for adjusting services.

~~(18)(19)~~ Subsections ~~(5)-(17)~~ ~~(5)-(18)~~ apply only to residential property insurance policies and condominium unit owner policies as described in s. 718.111(11).

(19) Except as otherwise provided in this chapter, no person, except an attorney at law or a public adjuster, may for money, commission, or any other thing of value, directly or indirectly:

(a) Prepare, complete, or file an insurance claim for an insured or a third-party claimant;

(b) 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;

(c) Advertise for employment as a public adjuster; or

(d) Solicit, investigate, or adjust a claim on behalf of a public adjuster, an insured, or a third-party claimant.

Section 3. Section 626.8541, Florida Statutes, is repealed.

Section 4. Section 626.8548, Florida Statutes, is amended to read:

626.8548 “All-lines adjuster” defined.—An “all-lines adjuster” is a person who, for money, commission, or any other thing of value, directly or indirectly is self-employed or employed by an insurer, a wholly owned subsidiary of an insurer, or an independent adjusting firm or other independent adjuster, and who undertakes on behalf of a public adjuster or an insurer or other insurers under common control or ownership 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 a paid spokesperson used as part of a written or an electronic advertisement or a person who photographs or inventories damaged personal property or business personal property if such person does not otherwise adjust, investigate, or negotiate for or attempt to effect the settlement of a claim. The term does not apply to life insurance or annuity contracts.

Section 5. Section 626.8561, Florida Statutes, is created to read:

626.8561 “Public adjuster apprentice” defined.—The term “public adjuster apprentice” means a person licensed as an all-lines adjuster who:

(1) Is appointed and employed or contracted by a public adjuster or a public adjusting firm;

(2) Assists the public adjuster or public adjusting firm in ascertaining and determining the amount of any claim, loss, or damage payable under an insurance contract, or who undertakes to effect settlement of such claim, loss, or damage; and

(3) Satisfies the requirements of s. 626.8651.

Section 6. Subsection (3) of section 626.8584, Florida Statutes, is amended to read:

626.8584 “Nonresident all-lines adjuster” defined.—A “nonresident all-lines adjuster” means a person who:

(3) Is licensed as an all-lines adjuster and self-appointed or appointed and employed or contracted by an independent adjusting firm or other independent adjuster, by an insurer admitted to do business in this state or a wholly owned subsidiary of an insurer admitted to do business in this state, or by a public adjuster or a public adjusting firm ~~other insurers under the common control or ownership of such insurer.~~

Section 7. Subsection (1) of section 626.861, Florida Statutes, is amended to read:

626.861 Insurer’s officers, insurer’s employees, reciprocal insurer’s representatives; adjustments by.—

(1) ~~Nothing in~~ This part may not shall be construed to prevent an executive officer of any insurer, ~~an~~ or a regularly-salaried employee of an insurer handling claims with respect to health insurance, an employee of an insurer handling claims with respect to residential property insurance in which the amount of coverage for the applicable type of loss is contractually limited to \$500 or less, or the duly designated attorney or agent authorized and acting for subscribers to reciprocal insurers, from adjusting any claim loss or damage under any insurance contract of such insurer.

Section 8. Subsection (3) of section 626.864, Florida Statutes, is amended to read:

626.864 Adjuster license types.—

(3) An all-lines adjuster may be appointed as an independent adjuster, public adjuster apprentice, or company employee adjuster, but not more than one of these both concurrently.

Section 9. Paragraphs (d) and (e) of subsection (1) of section 626.865, Florida Statutes, are amended to read:

626.865 Public adjuster’s qualifications, bond.—

(1) The department shall issue a license to an applicant for a public adjuster’s license upon determining that the applicant has paid the

applicable fees specified in s. 624.501 and possesses the following qualifications:

(d) ~~Has had sufficient experience, training, or instruction concerning the adjusting of damages or losses under insurance contracts, other than life and annuity contracts, is sufficiently informed as to the terms and effects of the provisions of those types of insurance contracts, and possesses adequate knowledge of the laws of this state relating to such contracts as to enable and qualify him or her to engage in the business of insurance adjuster fairly and without injury to the public or any member thereof with whom the applicant may have business as a public adjuster, or has been licensed and employed as a resident insurance company adjuster or independent adjuster in this state on a continual basis for the past year.~~

(e) ~~Has been licensed in this state as an all-lines adjuster, and has been appointed on a continual basis for the previous 6 months~~ Is licensed as a public adjuster apprentice under s. 626.8561, as an independent adjuster under s. 626.855, or as a company employee adjuster under s. 626.856 under s. 626.8651 and complies with the requirements of that license throughout the licensure period.

Section 10. Section 626.8651, Florida Statutes, is amended to read:

626.8651 Public adjuster apprentice appointment ~~license~~; qualifications.

(1)(a) The department shall issue an appointment ~~a license~~ as a public adjuster apprentice to a licensee ~~an applicant~~ who is:

1. Is licensed as an all-lines adjuster under s. 626.866;
2. Has filed with the department a bond executed and issued by a surety insurer that is authorized to transact such business in this state in the amount of \$50,000, which is conditioned upon the faithful performance of his or her duties as a public adjuster apprentice; and
3. Maintains such bond unimpaired throughout the existence of the appointment and for at least 1 year after termination of the appointment.

(b) The bond must be in favor of the department and must specifically authorize recovery by the department of the damages sustained in case the licensee commits fraud or unfair practices in connection with his or her business as a public adjuster apprentice. The aggregate liability of the surety for all such damages may not exceed the amount of the bond, and the bond may not be terminated by the issuing insurer unless written notice of at least 30 days is given to the licensee and filed with the department.

~~(a) A natural person at least 18 years of age.~~

~~(b) A United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services.~~

~~(e) Trustworthy and has such business reputation as would reasonably ensure that the applicant will conduct business as a public adjuster apprentice fairly and in good faith and without detriment to the public.~~

~~(2) All applicable license fees, as prescribed in s. 624.501, must be paid in full before issuance of the license.~~

~~(3) An applicant must pass the required written examination before a license may be issued.~~

~~(4) An applicant must have received designation as an Accredited Claims Adjuster (ACA), as a Certified Adjuster (CA), or as a Certified Claims Adjuster (CCA) after completion of training that qualifies the applicant to engage in the business of a public adjuster apprentice fairly and without injury to the public. Such training and instruction must address adjusting damages and losses under insurance contracts, the terms and effects of insurance contracts, and knowledge of the laws of this state relating to insurance contracts.~~

~~(5) At the time of application for license as a public adjuster apprentice, the applicant shall file with the department a bond executed and issued by a surety insurer authorized to transact such business in this state in the amount of \$50,000, conditioned upon the faithful performance of his or her duties as a public adjuster apprentice under the license for which the applicant has applied, and thereafter maintain the bond unimpaired throughout the existence of the license and for at least 1 year after termination of the license. The bond shall be in favor of the department and shall specifically authorize recovery by the department of the damages sustained in case the licensee commits fraud or unfair practices in connection with his or her business as a public adjuster apprentice. The aggregate liability of the surety for all such damages may not exceed the amount of the bond, and the bond may not be terminated by the issuing insurer unless written notice of at least 30 days is given to the licensee and filed with the department.~~

~~(6) A public adjuster apprentice shall complete at a minimum 100 hours of employment per month for 12 months of employment under the supervision of a licensed and appointed all-lines public adjuster in order to qualify for licensure as a public adjuster. The department may adopt rules that establish standards for such employment requirements.~~

~~(2)(7) An appointing public adjusting firm may not maintain more than four ~~12~~ public adjuster apprentices simultaneously. However, a supervising public adjuster may not be responsible for more than one ~~three~~ public adjuster apprentice ~~apprentices~~ simultaneously and shall be accountable for the acts of the ~~all~~ public adjuster apprentice ~~apprentices~~ which are related to transacting business as a public adjuster apprentice. This subsection does not apply to a public adjusting firm that adjusts claims primarily for commercial entities with operations in more than one state and that does not~~

directly or indirectly perform adjusting services for insurers or individual homeowners.

~~(8) An apprentice license is effective for 18 months unless the license expires due to lack of maintaining an appointment; is surrendered by the licensee; is terminated, suspended, or revoked by the department; or is canceled by the department upon issuance of a public adjuster license. The department may not issue a public adjuster apprentice license to any individual who has held such a license in this state within 2 years after expiration, surrender, termination, revocation, or cancellation of the license.~~

~~(9) After completing the requirements for employment as a public adjuster apprentice, the licensee may file an application for a public adjuster license. The applicant and supervising public adjuster or public adjusting firm must each file a sworn affidavit, on a form prescribed by the department, verifying that the employment of the public adjuster apprentice meets the requirements of this section.~~

~~(10) In no event shall A public adjuster apprentice licensed under this section perform any of the functions for which a public adjuster's license is required after expiration of the public adjuster apprentice license without having obtained a public adjuster license.~~

~~(3)(11) A public adjuster apprentice has the same authority as the licensed public adjuster or public adjusting firm that employs the apprentice except that an apprentice may not execute contracts for the services of a public adjuster or public adjusting firm and may not solicit contracts for the services except under the direct supervision and guidance of the supervisory public adjuster. An individual may not be, act as, or hold himself or herself out to be a public adjuster apprentice unless the individual is licensed as an all-lines adjuster and holds a current appointment by a licensed public all-lines adjuster or a public adjusting firm that employs a licensed all-lines public adjuster.~~

Section 11. Section 626.8695, Florida Statutes, is amended to read:

626.8695 Primary adjuster.—

(1) Each business location established by an adjuster, person operating an adjusting firm, a corporation, or an association and each location of a multiple location adjusting firm must designate with the department a primary adjuster who is licensed and appointed to adjust the insurance claims adjusted by the business location.

(2) An adjusting firm and each of its branch firms shall designate a primary adjuster for each such firm or location and must file with the department, at the department's designated website, the name and license number of such primary adjuster and the physical address of the adjusting firm or branch firm location where he or she is the primary adjuster, on a form approved by the department. The designation of the primary adjuster

may be changed at the option of the adjusting firm. Any such change is effective upon notification to the department. Notice of change must be provided sent to the department within 30 days after such change.

~~(3)(2)(a)~~ For purposes of this section, a “primary adjuster” is the licensed adjuster who is responsible for the ~~hiring and supervision of all individuals within an adjusting firm location who~~ act deal with the public and who acts in the capacity of a public adjuster as defined in s. 626.854, or an independent adjuster as defined in this chapter s. 626.855. An adjuster may be designated as a primary adjuster for more than only one adjusting firm location provided no person engages in activity requiring licensure as an adjuster at any location when an adjuster is not physically present.

~~(4)(b)~~ For purposes of this section, an “adjusting firm” is a location where an independent or public adjuster is engaged in the business of insurance.

~~(5)(3)~~ The department may suspend or revoke the license of the primary adjuster if the adjusting firm employs or contracts any person who has had a license denied or any person whose license is currently suspended or revoked. However, if a person has been denied a license for failure to pass a required examination, he or she may be employed or contracted to perform clerical or administrative functions for which licensure is not required.

~~(6)(4)~~ The primary adjuster in an ~~unincorporated adjusting firm, or the primary adjuster in an incorporated adjusting firm in which no officer, director, or stockholder is an adjuster,~~ is responsible and accountable for misconduct or violations of this code committed by the primary adjuster or by any other person the acts of salaried employees under his or her direct supervision and control while acting on behalf of the adjusting firm. This section does not render a primary adjuster ~~Nothing in this section renders any person criminally liable for an~~ or subject to any disciplinary proceedings for any act unless the primary adjuster ~~person~~ personally committed the act or knew or should have known of the act and of the facts constituting a violation of this code.

~~(7)(5)~~ The department may suspend or revoke the license of any adjuster who is employed or contracted by a person whose license is currently suspended or revoked.

~~(8)(6)~~ An adjusting firm location may not conduct the business of insurance unless a primary adjuster is designated and provides services to the firm at all times. If the Failure of the person operating the adjusting firm to designate a primary adjuster designated with the department ends his or her affiliation with the firm for any reason and if the firm fails to designate another primary adjuster, as required in subsection (2), within 90 days, the firm license automatically expires on the 91st day after the date the designated primary adjuster ended his or her affiliation with ~~for the firm, or for each location, as applicable, on a form prescribed by the department within 30 days after inception of the firm or change of primary~~

~~adjuster designation, constitutes grounds for requiring the adjusting firm to obtain an adjusting firm license pursuant to s. 626.8696.~~

~~(9)(7) Any adjusting firm may determine a request, on a form prescribed by the department, verification from the department of any person's current licensure status by submitting an appointment request. If a request is mailed to the office within 5 working days after the date an adjuster is hired. If, and the department subsequently notifies the adjusting firm that its appointee's an employee's license is currently suspended, revoked, or has been denied, the license of the primary adjuster may shall not be revoked or suspended if the unlicensed person is immediately dismissed from employment as an adjuster with the firm.~~

Section 12. Section 626.872, Florida Statutes, is repealed.

Section 13. Subsection (1) of section 626.874, Florida Statutes, is amended to read:

626.874 Catastrophe or emergency adjusters.—

(1) In the event of a catastrophe or emergency, the department may issue a license, for the purposes and under the conditions and for the period of emergency as it shall determine, to persons who are residents or non-residents of this state, who are at least 18 years of age, who are United States citizens or legal aliens who possess work authorization from the United States Bureau of Citizenship and Immigration Services, and who are not licensed adjusters under this part but who have been designated and certified to it as qualified to act as adjusters ~~by all lines resident adjusters, by an authorized insurer, or by a licensed general lines agent to adjust claims, losses, or damages under policies or contracts of insurance issued by such insurers, or by the primary adjuster of an independent adjusting firm contracted with an authorized insurer to adjust claims on behalf of the insurer.~~ by an authorized insurer, or by a licensed general lines agent to adjust claims, losses, or damages under policies or contracts of insurance issued by such insurers, or by the primary adjuster of an independent adjusting firm contracted with an authorized insurer to adjust claims on behalf of the insurer. The fee for the license is as provided in s. 624.501(12)(c).

Section 14. Subsection (2) of section 626.875, Florida Statutes, is amended to read:

626.875 Office and records.—

(2) The records of the adjuster relating to a particular claim or loss shall be so retained in the adjuster's place of business for a period of not less than 5 ~~3~~ years after completion of the adjustment. This provision shall not be deemed to prohibit return or delivery to the insurer or insured of documents furnished to or prepared by the adjuster and required by the insurer or insured to be returned or delivered thereto.

Section 15. Section 626.876, Florida Statutes, is amended to read:

626.876 Exclusive employment; public adjusters, all-lines independent ~~independent~~ adjusters.—

(1) An individual licensed ~~and appointed~~ as a public adjuster may not be simultaneously licensed as an all-lines adjuster ~~employed during the same period by more than one public adjuster or public adjuster firm or corporation.~~

(2) An individual licensed as an all-lines adjuster and appointed as an independent adjuster, a company employee adjuster, or a public adjuster apprentice may not be simultaneously appointed, contracted, or employed as an adjuster that requires a different appointment type ~~during the same period by more than one independent adjuster or independent adjuster firm or corporation.~~

Section 16. Section 626.879, Florida Statutes, is repealed.

Section 17. This act shall take effect January 1, 2018.

Approved by the Governor June 23, 2017.

Filed in Office Secretary of State June 23, 2017.