

Regular Session, 2010

SENATE BILL NO. 662

BY SENATOR HEBERT

INSURANCE CLAIMS. Provides with respect to claims adjusters. (8/15/10)

1 AN ACT

2 To amend and reenact R.S. 22:1661, 1662, 1664(C), 1665 (D), and 1667(A), to enact R.S.
3 22:1665(E), and to repeal R.S. 22:1669(C), relative to claims adjusters; to provide
4 with respect to definitions and general exemptions; to provide for application for
5 claims adjuster license and resident license; to provide with respect to catastrophe
6 or emergency claims adjuster registration; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 22:1661, 1662, 1664(C), 1665(D) and 1667(A) are hereby amended
9 and reenacted and R. S. 22:1665(E) is hereby enacted to read as follows:

10 §1661. Definitions

11 As used in this Part, unless the context requires otherwise, the following
12 definitions shall be applicable:

13 (1) "Adjuster" means an individual who investigates or adjusts losses on
14 behalf of an insurer as an independent contractor or as an employee of:

15 (a) An adjustment bureau;

16 (b) An association;

17 (c) A property and casualty producer;

1 (d) An independent contractor;

2 (e) An insurer; or

3 (f) A managing general agent.

4 (2) "Business entity" means a corporation, association, partnership, limited
5 liability company, limited liability partnership or other legal entity.

6 (3) "Fingerprints" means an impression of the lines on the finger taken for
7 purpose of identification. The impression may be electronic or in ink converted to
8 electronic format.

9 (4) "Home state" means the District of Columbia and any state or territory
10 of the United States in which the adjuster's principal place of residence or principal
11 place of business is located. If neither the state in which the adjuster maintains the
12 principal place of residence nor the state in which the adjuster maintains the principal
13 place of business has a substantially similar law governing adjusters, the adjuster
14 may declare another state in which he becomes licensed and acts as an adjuster to be
15 the "home state".

16 (5) "Individual" means a natural person.

17 (6) "Insurer" means any type of insurer authorized or approved unauthorized
18 to conduct business in this state.

19 (7) "Person" means an individual or a business entity.

20 (8) "Uniform individual application" means the current version of the
21 National Association of Insurance Commissioners (NAIC) Uniform Individual
22 Application for resident and nonresident individuals.

23 (9) "Uniform business entity application" means the current version of the
24 National Association of Insurance Commissioners (NAIC) Uniform Business Entity
25 Application for resident and nonresident business entities.

26 §1662. General exemptions

27 This Part does not apply to:

28 (1) An attorney at law admitted to practice in this state, when acting in his
29 professional capacity as an attorney.

1 (2) An employee of an insurer who is not regularly engaged in the
2 adjustment or investigation of insurance claims.

3 (3) A person employed only to furnish technical assistance to a licensed
4 adjuster, including but not limited to an investigator, an attorney, an engineer, an
5 estimator, a handwriting expert, a photographer, and a private detective.

6 (4) A producer of an authorized insurer or a licensed employee of a producer
7 who processes an undisputed or uncontested loss for the insurer under a policy issued
8 by the producer.

9 (5) A person who performs clerical duties and does not negotiate with parties
10 on disputed or contested claims.

11 **(6)(a) An individual who collects claim information from, or furnishes**
12 **claim information to, insured or claimants, who conducts data entry including**
13 **entering data into an automated claims adjudication system provided such**
14 **individual is an employee of a business entity licensed pursuant to this Chapter,**
15 **or an employee of an affiliate of a business entity licensed pursuant to the**
16 **Chapter, if there are no more than twenty-five individuals under the**
17 **supervision of one licensed individual adjuster or licensed individual insurance**
18 **producer. As used in this Part, "automated claims adjudication system" means**
19 **a preprogrammed computer system designed for the collection, data entry,**
20 **calculation and system generated final resolution of consumer electronic**
21 **products insurance claims which:**

22 **(i) May be utilized only by a licensed adjuster or licensed producer, or**
23 **supervised individuals operating pursuant to this Paragraph;**

24 **(ii) Must comply with all claims payment requirements of the Louisiana**
25 **Insurance Code; and**

26 **(iii) Must be certified as compliant with this Section by a licensed**
27 **adjuster that is an officer of a licensed business entity under this Chapter.**

28 **(b) Individuals who are licensed as producers pursuant to R.S. 22:1543**
29 **are not required to be licensed as an adjuster for purposes of this Section.**

1 C.(1) In order to make a determination of eligibility, the commissioner of
2 insurance is authorized to require fingerprints of applicants and submit the
3 fingerprints and the fee required to perform the criminal history record checks to the
4 Louisiana Bureau of Criminal Identification and Information and the Federal Bureau
5 of Investigation (FBI) for state and national criminal history record checks. The
6 commissioner of insurance shall require a criminal history record check on each
7 applicant in accordance with this Part. The commissioner of insurance shall require
8 each applicant to submit a full set of fingerprints in order for the commissioner of
9 insurance to obtain and receive National Criminal History Records from the FBI
10 Criminal Justice Information Services Division.

11 **(2) All business entities applying to do business as independent adjusting**
12 **companies must provide a listing of all executive officers and directors of the**
13 **applicant and of all executive officers and directors of entities owning and any**
14 **individuals owning, directly or indirectly, ten percent or more of the**
15 **outstanding voting securities of the applicant. In order to make a determination**
16 **of eligibility, the commissioner may require any person listed above to submit**
17 **addresses, social security numbers, criminal and administrative history,**
18 **fingerprints, background checks, and biographical statements.**

19 ~~(2)~~**(3)** The commissioner of insurance may contract for the collection,
20 transmission, and resubmission of fingerprints required under this Section. If the
21 commissioner of insurance does so, the fee for collecting, transmitting, and retaining
22 fingerprints shall be payable directly to the contractor by the person. The
23 commissioner of insurance may agree to a reasonable fingerprinting fee to be
24 charged by the contractor.

25 ~~(3)~~**(4)** The commissioner of insurance may waive submission of fingerprints
26 by any person that has previously furnished fingerprints and whose fingerprints are
27 on file with the Central Repository of the National Association of Insurance
28 Commissioners (NAIC), its affiliates, or subsidiaries.

29 ~~(4)~~ **(5)** The commissioner of insurance is authorized to receive criminal

1 history record information in lieu of the Louisiana Bureau of Criminal Identification
2 and Information that submitted the fingerprints to the FBI.

3 ~~(5)~~(6) The commissioner of insurance is authorized to submit electronic
4 fingerprint records and necessary identifying information to the National Association
5 of Insurance Commissioners (NAIC), its affiliates, or subsidiaries for permanent
6 retention in a centralized repository. The purpose of such a centralized repository is
7 to provide insurance commissioners with access to fingerprint records in order to
8 perform criminal history record checks.

9 §1665. Resident license

10 * * *

11 **D. No resident of Canada may be licensed pursuant to R.S. 22:1663, or**
12 **may designate Louisiana as their home state, unless such person has successfully**
13 **passed the adjuster examination and has complied with the other applicable**
14 **portions of this Section, except that such applicant shall not be required to**
15 **comply with Paragraph (A) (4) of this Section.**

16 ~~D.~~**E.** The commissioner of insurance may require any documents reasonably
17 necessary to verify the information contained in the application.

18 * * *

19 §1667. Catastrophe or emergency claims adjuster registration

20 A. In the event of a catastrophe or an emergency, no adjuster's license shall
21 be required for an individual who is employed or retained by an insurer and brought
22 into this state for the purpose of investigating or making adjustment of losses
23 resulting from the catastrophe or emergency. Notwithstanding, the commissioner
24 of insurance shall establish procedures to register all such individuals.

25 * * *

26 Section 2. The provisions of R.S. 22:1669(C) are hereby repealed.

The original instrument was prepared by Cheryl Horne. The following digest, which does not constitute a part of the legislative instrument, was prepared by Ann S. Brown.

DIGEST

Hebert (SB 662)

Present law defines adjuster as an individual who investigates or adjusts losses on behalf of an insurer as an independent-contractor or employee of an adjustment bureau, an association, a property and casualty producer, an independent contractor, an insurer or a managing general agent. Proposed law retains present law.

Present law lists exemptions from the claims adjuster provisions in Title 22. Proposed law retains present law and adds the following to the list of exemptions:

- (1) An individual who collects claim information from, or furnishes claim information to, insured or claimants, and who conducts data entry including entering data into an automated claims adjudication system provided such individual is an employee of a business entity licensed pursuant to law, or an employee of an affiliate of a business entity licensed pursuant to law. Also defines an automated claims adjudication system.
- (2) Individuals who are licensed as producers.
- (3) A full-time salaried employee of a property owner or management company retained by the owner who either does not hold the employee out as an adjuster or has not been hired to handle a specific claim and the employee acts at the discretion of the owner or management company regarding a claim related to the owner's property.
- (4) A person who settles only reinsurance or subrogation claims.

Present law exempts a producer of an authorized insurer or a licensed employee of a producer who processes an undisputed or uncontested loss for the insurer under a policy issued by the producer from the claims adjuster provisions in Title 22. Proposed law retains present law.

Present law authorizes the commissioner of insurance to require fingerprints of applicants to perform the criminal history record checks to the Louisiana Bureau of Criminal Identification and Information and the Federal Bureau of Investigation for state and national criminal history checks.

Proposed law retains present law and further authorizes the commissioner of insurance to require all business entities applying to do business as independent adjusting companies to provide a listing of all executive officers and directors of the applicant and of all executive officers and directors of entities owning and any individuals owning, directly or indirectly, ten percent or more of the outstanding voting securities of the applicant. Further provides that in order to make a determination of eligibility, the commissioner may require any person listed above to submit addresses, social security numbers, criminal and administrative history, fingerprints, background checks, and biographical statement.

Proposed law requires the commissioner of insurance to prohibit a resident of Canada to be licensed as a claims adjuster unless such person has successfully passed the adjuster examination and has complied with the other applicable portions of present law.

Present law exempts the following individuals from prelicensing or examination requirements for claim adjusting:

- (1) Any individual previously licensed as a claim adjuster in another state.
- (2) Any individual licensed as a claim adjuster in another state who moves here and makes application for a license within 90 days.
- (3) Any individual who, as of January 1, 2007, has been actively engaged in the business of adjusting insurance claims for at least three consecutive years or who has five years of such experience.
- (4) Any individual who was previously licensed as a claim adjuster in this state.

Proposed law retains present law relative to individuals who have been or are licensed as claim adjusters (Items 1, 2, and 4 above)

Proposed law repeals the exemption for persons having only experience as a claim adjuster. (Item #3 above).

Effective August 15, 2010.

(Amends R.S. 22:1661, 1662, 1664(C), 1665(D) and 1667(A); adds R.S. 22:1665(E); repeals R.S. 22:1669(C))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Insurance to the original bill.

1. Removes definition of "catastrophe".
2. Removes exclusion from present law for an officer or director of an authorized insurer, surplus lines insurer, or risk retention group; and licensed health care providers, or managed care organizations, or their employees providing managed care services which don't include determination of compensability;
3. Add to exclusion from present law full-time salaried employees of a property owner or management company.

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill.

1. Removes proposed law changes to the definition of an adjuster.
2. Removes the following from the additional list of proposed law exemptions:
 - (a) A licensed insurance producer or managing general agent of the insurer to whom claim authority has been granted by the insurer.
 - (b) U.S. manager of the U.S. branch of an alien insurer.
3. Removes present law exemption for a producer of an authorized insurer or a licensed employee who processes an undisputed or uncontested loss.

4. Removes an exemption from present law for person having only experience as claim adjuster from prelicensing or examination requirements.
5. Provides for and defines an automated claims adjudication system.