

Bill No. CS for CS for SB 1912

Barcode 121528

CHAMBER ACTION

Senate

House

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Senator Argenziano moved the following amendment:

Senate Amendment (with title amendment)

On page 38, lines 16 through 25, delete those lines

and insert:

Section 30. Section 626.854, Florida Statutes, is amended to read:

626.854 "Public adjuster" defined; prohibitions; requirements.--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) DEFINITIONS.--

(a) The term ~~A~~ "public adjuster" means ~~is~~ any person, except a duly licensed attorney at law as hereinafter in s. 626.860 provided, who, for money, commission, or any other thing of value, 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 or aids in any manner on behalf of an insured or third-party claimant in negotiating for or effecting the settlement of a claim or

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1 claims for loss or damage covered by an insurance contract or
 2 who advertises for employment as an adjuster of such claims,
 3 and also includes any person who, for money, commission, or
 4 any other thing of value, solicits, investigates, or adjusts
 5 such claims on behalf of any such public adjuster. The term
 6 excludes:

7 ~~(2) This definition does not apply to:~~

8 1.(a) A licensed health care provider or employee
 9 thereof who prepares or files a health insurance claim form on
 10 behalf of a patient.

11 2.(b) A person who files a health claim on behalf of
 12 another and does so without compensation.

13 (b) For purposes of this section, the term "insured"
 14 includes only the policyholder and any beneficiaries named or
 15 similarly identified in the policy.

16 ~~(2)(3) PROHIBITIONS.--~~

17 (a) A public adjuster may not give legal advice. A
 18 public adjuster may not act on behalf of or aid any person in
 19 negotiating or settling a claim relating to bodily injury,
 20 death, or noneconomic damages and may not receive a fee under
 21 the contract of representation for any Unfair Claims Practices
 22 violation, tort claim, statutory interest, costs, attorney's
 23 fees, or extra-contractual damages unrelated to the damages
 24 under the policy.

25 (b) A public adjuster may not restrict or prevent an
 26 insurer, company, or independent adjuster, attorney, or
 27 investigator or any other person acting on behalf of the
 28 insurer from having reasonable access at reasonable times to
 29 an insured or claimant or to the insured property that is the
 30 subject of a claim.

31 (3) LIMITS ON COMMISSIONS.--

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1 (a) As to any one loss or occurrence, a public
 2 adjuster may not charge, agree to, or accept as compensation
 3 or reimbursement any payment, commission, fee, or other thing
 4 of value equal to or greater than any payment, commission,
 5 fee, or other thing of value equal to or greater than 10
 6 percent of any insurance settlement or proceeds. The
 7 Department of Financial Services may, however, adopt a rule
 8 specifying higher limits on public adjuster commissions than
 9 the 10-percent limit in this paragraph.

10 (b) A public adjuster may not, prior to settlement of
 11 the claim, require, demand, or accept any fee, retainer,
 12 compensation, deposit, or other thing of value.

13 (4) REQUIREMENTS AS TO CONTRACTS.--

14 (a) A public adjuster shall provide, immediately upon
 15 providing notice of representation to the insurer and
 16 throughout the claims handling process, a true and complete
 17 copy of any contract with an insured or claimant, including
 18 any revised or supplemental contracts. Each such copy must be
 19 provided to the insurer and to the representatives of the
 20 insurer handling the claim.

21 (b) A public adjuster shall assure that all contracts
 22 for his or her services are in writing and comply with the
 23 following requirements:

24 1. The contract must legibly state the full name as
 25 specified in the department records of the public adjuster
 26 signing the contract.

27 2. The contract must be signed by the public adjuster
 28 who solicited the contract. If the public adjuster is licensed
 29 by the department as an emergency public adjuster, the
 30 contract must also show the emergency public adjuster's:

31 a. Permanent home address and home telephone number;

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1 b. Permanent home-state business address and telephone
2 number; and

3 c. Department of Financial Services license number.

4 3. The contract must show:

5 a. The insured's full name and street address;

6 b. The address of the loss;

7 c. A brief description of the loss; and

8 d. The name of the insurer and, if available, the
9 policy number.

10 4. The contract must be signed by the insured or
11 claimant and show the date on which the insured or claimant
12 signed the contract and the county in which it was executed or
13 signed.

14 5.a. The contract must show the full amount of
15 compensation to the public adjuster.

16 b. If the compensation is based on a share of the
17 insurance settlement, the contract must show the exact
18 percentage.

19 c. The contract must specify any costs to be
20 reimbursed to the public adjuster out of the proceeds,
21 including specification by type and an estimate of the dollar
22 amount.

23 6. The contract must set forth all terms and
24 conditions of the engagement.

25 (c) Compensation provisions in a public adjuster's
26 contract may not be redacted in any copy provided to an
27 insurer. Any such redaction is an omission of material fact in
28 violation of s. 626.9541(1)(e)2.

29 (5) GENERAL ETHICAL REQUIREMENTS.--Public adjusters
30 shall adhere to the following requirements:

31 (a) A public adjuster may not undertake the adjustment

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1 of any claim concerning which he or she is not currently
2 competent and knowledgeable as to the terms and conditions of
3 the insurance coverage, or which otherwise exceeds his or her
4 expertise.

5 (b)1. A person may not, as a public adjuster,
6 represent any person or entity whose claim such public
7 adjuster previously adjusted while acting as an adjuster
8 representing a public adjuster or represent any person or
9 entity whose claim such public adjuster previously adjusted
10 while acting as an adjuster representing an insurer or
11 independent adjusting firm.

12 2. A person may not, as a company or independent
13 adjuster, represent himself or herself, or any insurer or
14 independent adjusting firm, against any person or entity that
15 he or she previously represented as a public adjuster.

16 (c)1. A public adjuster may not represent or imply to
17 a client or potential client that insurers, company adjusters,
18 or independent adjusters routinely attempt to, or do in fact,
19 deprive claimants of their full rights under an insurance
20 policy.

21 2. An insurer, independent adjuster, or company
22 adjuster may not represent or imply to a claimant that
23 engaging a public adjuster will delay or have another adverse
24 effect upon the settlement of a claim.

25 (d)1. A public adjuster, while so licensed in the
26 department's records, may not represent or act as a company
27 adjuster, independent adjuster, or general lines agent.

28 2. An independent adjuster, company adjuster, or
29 general lines agent, while so licensed in the department's
30 records, may not represent or act as a public adjuster.

31 (e)1. A public adjuster's contract with a client is

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1 revocable or cancelable by the insured or claimant, without
2 penalty or obligation, for at least 14 days after the day the
3 contract is formed.

4 2. The public adjuster shall disclose in writing to
5 the insured or claimant that the insured or claimant has the
6 right to cancel with prompt notice within the revocation
7 period.

8 3. If the insured or claimant elects to cancel the
9 contract, the insured or claimant shall provide prompt notice
10 to the public adjuster.

11 4. This paragraph does not prevent an insured or
12 claimant from pursuing any civil remedy after the expiration
13 of the revocation period.

14 (f)1. A public adjuster may not enter into a contract
15 that grants, or otherwise accept, a power of attorney that
16 vests in the public adjuster the effective authority to choose
17 the persons who are to perform repair work.

18 2. A public adjuster shall ensure that, if a
19 contractor, architect, engineer, or other licensed
20 professional is used in formulating estimates or otherwise
21 participates in the adjustment of the claim, the professional
22 is licensed by the Department of Business and Professional
23 Regulation.

24 (6) TOTAL LOSS CLAIMS.--A public adjuster may not
25 knowingly enter into a contract to adjust a residential
26 property claim subsequent to an insurer declaring the property
27 a total loss, or when the property is an obvious total loss,
28 unless the services to be provided by the public adjuster can
29 reasonably be expected to result in the insured or claimant
30 obtaining an insurance settlement, net of the public
31 adjuster's compensation, in excess of what the insured or

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1 claimant would have obtained without the services of the
2 public adjuster.

3 ~~(4) For purposes of this section, the term "insured"~~
4 ~~includes only the policyholder and any beneficiaries named or~~
5 ~~similarly identified in the policy.~~

8 ===== T I T L E A M E N D M E N T =====

9 And the title is amended as follows:

10 On page 3, lines 25 through 27, delete those lines

11
12 and insert:

13 cross-references, to conform; amending s.
14 626.854, F.S.; defining the term "insured";
15 prohibiting a public adjuster from undertaking
16 adjustment of certain claims for a fee;
17 prohibiting a public adjuster from undertaking
18 certain activities in the course of adjusting a
19 claim; limiting the commission payable to a
20 public adjuster; authorizing rulemaking by the
21 Department of Financial Services; requiring a
22 public adjuster to provide an insurer with
23 certain contracts relating to adjustment of a
24 claim; establishing requirements for a contract
25 for the services of a public adjuster;
26 prohibiting redaction of provisions regarding
27 compensation of a public adjuster in a contract
28 provided to an insurer; establishing that such
29 a redaction is an omission violating a
30 statutory provision governing unfair or
31 deceptive trade practices; prohibiting a public

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1 adjuster from adjusting certain claims;
2 prohibiting a public adjuster from making
3 specified representations to a client or a
4 potential client; prohibiting a licensed public
5 adjuster, independent adjuster, company
6 adjuster, or general lines agent from adjusting
7 certain claims; providing for revocation or
8 cancellation of a contract between public
9 adjuster and a client; requiring notice to the
10 client of the right to cancel such contract;
11 requiring prompt notice of an election to
12 cancel such contract; prohibiting a public
13 adjuster from contracting for or accepting
14 authority to choose persons who are to perform
15 repair work; requiring that a public adjuster
16 ensure only licensed professionals are used to
17 develop estimates or otherwise participate in a
18 claim adjustment; prohibiting a public adjuster
19 from contracting to adjust certain residential
20 property claims that an insurer has declared a
21 total loss;

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