

1 A bill to be entitled
 2 An act relating to insurance representatives; amending s.
 3 626.854, F.S.; specifying prohibitions for public
 4 adjusters relating to soliciting professional employment;
 5 prohibiting public adjusters and persons associated with
 6 public adjusters from sending unsolicited written
 7 communications under certain circumstances; specifying
 8 criteria for such communications; specifying requirements
 9 for and prohibitions relating to certain written or
 10 electronic communications from public adjusters to
 11 prospective clients; providing an effective date.

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

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 15 Section 1. Subsection (8) and paragraph (a) of subsection
 16 (11) of section 626.854, Florida Statutes, are amended to read:
 17 626.854 "Public adjuster" defined; prohibitions.--The
 18 Legislature finds that it is necessary for the protection of the
 19 public to regulate public insurance adjusters and to prevent the
 20 unauthorized practice of law.

21 (8) (a) It is an unfair and deceptive insurance trade
 22 practice pursuant to s. 626.9541 for a public adjuster or any
 23 other person to circulate or disseminate any advertisement,
 24 announcement, or statement containing any assertion,
 25 representation, or statement with respect to the business of
 26 insurance which is untrue, deceptive, or misleading.

27 (b) Except as provided in this subsection, a public
 28 adjuster may not solicit professional employment from a

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29 prospective client with whom the public adjuster has any family
30 or prior professional relationship, in person or otherwise, when
31 a significant motive for the public adjuster's doing so is the
32 public adjuster's pecuniary gain. A public adjuster may not
33 permit employees or agents of the public adjuster to solicit on
34 the public adjuster's behalf. A public adjuster may not enter
35 into an agreement for, charge, or collect a fee for professional
36 employment obtained in violation of this paragraph. The term
37 "solicit" includes contact in person, by telephone, telegraph,
38 or facsimile, or by any other communication directed to a
39 specific recipient and includes any written form of
40 communication directed to a specific recipient and not meeting
41 the requirements of this paragraph, and electronic mail
42 communications. A public adjuster may not send, or knowingly
43 permit to be sent, on the public adjuster's behalf or on behalf
44 of the public adjuster's firm or partner, an associate of the
45 public adjuster, or any other public adjuster affiliated with
46 the public adjuster or the public adjuster's firm an unsolicited
47 electronic mail communication directly or indirectly to a
48 prospective client for the purpose of obtaining professional
49 claims employment.

50 (c)1. A public adjuster may not send, or knowingly permit
51 to be sent, on the public adjuster's behalf or on behalf of the
52 public adjuster's firm or partner, an associate of the public
53 adjuster, or any other public adjuster affiliated with the
54 public adjuster or the public adjuster's firm an unsolicited
55 written communication directly or indirectly to a prospective
56 client for the purpose of obtaining professional employment if:

57 a. The written communication concerns a claim or otherwise
 58 relates to an accident or disaster involving the person to whom
 59 the communication is addressed or a relative of that person,
 60 unless the accident or disaster occurred more than 30 days prior
 61 to the mailing of the communication;

62 b. It has been made known to the public adjuster that the
 63 person does not want to receive such communications from the
 64 public adjuster;

65 c. The communication involves coercion, duress, fraud,
 66 overreaching, harassment, intimidation, or undue influence;

67 d. The communication contains a false, fraudulent,
 68 misleading, or deceptive statement or claim; or

69 e. The public adjuster knows or reasonably should know
 70 that the physical, emotional, or mental state of the person
 71 makes it unlikely that the person would exercise reasonable
 72 judgment in employing a public adjuster.

73 2. Written or electronic communications from a public
 74 adjuster, a public adjuster's firm or partner, an associate of
 75 the public adjuster, or any other public adjuster affiliated
 76 with the public adjuster or the public adjuster's firm to
 77 prospective clients for the purpose of obtaining professional
 78 employment shall not contain a false, misleading, or deceptive
 79 communication about the public adjuster. A communication
 80 violates this prohibition if the communication:

81 a. Contains a material misrepresentation of fact or law;

82 b. Is false or misleading;

83 c. Fails to disclose material information necessary to
 84 prevent the information supplied from being false or misleading;

85 d. Is unsubstantiated in fact;
 86 e. Is deceptive;
 87 f. Contains any reference to past successes or results
 88 obtained;
 89 g. Promises results;
 90 h. States or implies that the public adjuster can achieve
 91 results by means that violate the law;
 92 i. Compares the public adjuster's services with other
 93 adjusters' services, unless the comparison can be factually
 94 substantiated; or
 95 j. Contains a testimonial.
 96 3. The first page of such written communication and the
 97 lower left corner of the envelope containing the written
 98 communication shall be plainly marked "ADVERTISEMENT" in red
 99 ink. If the written communication is in the form of a self-
 100 mailing brochure or pamphlet, the address panel of the brochure
 101 or pamphlet and the inside of the brochure or pamphlet shall be
 102 plainly marked "ADVERTISEMENT" in red ink. Brochures solicited
 103 by clients or prospective clients need not be marked
 104 "ADVERTISEMENT".
 105 4. Written communications mailed to prospective clients
 106 shall be sent only by regular United States mail and not by
 107 registered mail or other forms of restricted delivery.
 108 5. Every written communication must be accompanied by a
 109 written statement detailing the background, training, and
 110 experience of the public adjuster or public adjuster firm. The
 111 statement must include information about the specific experience
 112 of the advertising public adjuster or public adjuster firm in

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113 the area or areas of public adjuster for which professional
114 employment is sought. Each written communication disseminated by
115 a public adjuster referral service shall be accompanied by a
116 written statement describing the background, training, and
117 experience of each public adjuster to whom the recipient may be
118 referred.

119 6. If a contract for representation is mailed with the
120 written communication, the top of each page of the contract
121 shall be marked "SAMPLE" in red ink in a type size one size
122 larger than the largest type used in the contract and the words
123 "DO NOT SIGN" shall appear on the client signature line.

124 7. The first sentence of any written communication
125 prompted by a specific occurrence involving or affecting the
126 intended recipient of the communication or a family member shall
127 be: "IF YOU HAVE ALREADY RETAINED A PUBLIC ADJUSTER FOR THIS
128 MATTER, PLEASE DISREGARD THIS LETTER."

129 8. Written communications may not be made to resemble
130 legal pleadings or other legal documents. This prohibition does
131 not preclude the mailing of brochures and pamphlets.

132 9. If a public adjuster other than the public adjuster
133 whose name or signature appears on the communication will
134 actually handle the case or matter, any written communication
135 concerning a specific matter shall include a statement advising
136 the client of that fact.

137 10. Any written communication prompted by a specific
138 occurrence involving or affecting the intended recipient of the
139 communication or a family member shall disclose how the public
140 adjuster obtained the information prompting the communication.

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141 The disclosure required by this subparagraph shall be specific
142 enough to help the recipient understand the extent of the public
143 adjuster's knowledge regarding the recipient's particular
144 situation.

145 11. A written communication seeking employment by a
146 specific prospective client in a specific matter may not reveal
147 on the envelope, or on the outside of a self-mailing brochure or
148 pamphlet, the nature of the subject of the client's claim.

149 (11) (a) If a public adjuster enters into a contract with
150 an insured or claimant to reopen a claim or to file a
151 supplemental claim that seeks additional payments for a claim
152 that has been previously paid in part or in full or settled by
153 the insurer, the public adjuster may not charge, agree to, or
154 accept any compensation, payment, commission, fee, or other
155 thing of value based on a written offer, previous settlement, or
156 previous claim payments by the insurer for the same cause of
157 loss. The charge, compensation, payment, commission, fee, or
158 other thing of value may be based only on the claim payments or
159 settlement obtained through the work of the public adjuster
160 after entering into the contract with the insured or claimant.
161 The contracts described in this paragraph are not subject to the
162 limitations in paragraph (b).

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164 The provisions of subsections (5)-(12) apply only to residential
165 property insurance policies and condominium association policies
166 as defined in s. 718.111(11).

167 Section 2. This act shall take effect July 1, 2009.