

By Senator Smith

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

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

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

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

29 (b) Except as provided in this subsection, a public

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

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

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

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

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

69 d. The communication contains a false, fraudulent,
70 misleading, or deceptive statement or claim; or

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

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

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

84 b. Is false or misleading;

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

87 d. Is unsubstantiated in fact;

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88 e. Is deceptive;

89 f. Contains any reference to past successes or results
90 obtained;

91 g. Promises results;

92 h. States or implies that the public adjuster can achieve
93 results by means that violate the law;

94 i. Compares the public adjuster's services with other
95 adjusters' services, unless the comparison can be factually
96 substantiated; or

97 j. Contains a testimonial.

98 3. The first page of such written communication and the
99 lower left corner of the envelope containing the written
100 communication shall be plainly marked "ADVERTISEMENT" in red
101 ink. If the written communication is in the form of a self-
102 mailing brochure or pamphlet, the address panel of the brochure
103 or pamphlet and the inside of the brochure or pamphlet shall be
104 plainly marked "ADVERTISEMENT" in red ink. Brochures solicited
105 by clients or prospective clients need not be marked
106 "ADVERTISEMENT."

107 4. Written communications mailed to prospective clients
108 shall be sent only by regular United States mail and not by
109 registered mail or other forms of restricted delivery.

110 5. Every written communication must be accompanied by a
111 written statement detailing the background, training, and
112 experience of the public adjuster or public adjuster firm. The
113 statement must include information about the specific experience
114 of the advertising public adjuster or public adjuster firm in
115 the area or areas for which professional employment is sought.
116 Each written communication disseminated by a public adjuster

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117 referral service shall be accompanied by a written statement
118 describing the background, training, and experience of each
119 public adjuster to whom the recipient may be referred.

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

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

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

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

138 10. Any written communication prompted by a specific
139 occurrence involving or affecting the intended recipient of the
140 communication or a family member shall disclose how the public
141 adjuster obtained the information prompting the communication.
142 The disclosure required by this subparagraph shall be specific
143 enough to help the recipient understand the extent of the public
144 adjuster's knowledge regarding the recipient's particular
145 situation.

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

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

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

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