

1 A bill to be entitled
2 An act relating to public adjusters; amending s. 626.854,
3 F.S.; limiting compensation on certain claims; revising
4 limitations on certain compensation, payments commissions,
5 or fees; specifying statements that may be considered
6 deceptive or misleading if made in any public adjuster's
7 advertisement or solicitation; defining the term "written
8 advertisement"; requiring a disclaimer to be included in
9 any public adjuster's written advertisement; providing
10 requirements for such disclaimer; requiring advance notice
11 to certain parties before scheduling certain meetings;
12 authorizing waiver of such notice; requiring a public
13 adjuster to make a reasonable and necessary effort to
14 ensure prompt notice of certain property loss claims;
15 providing that an insurer be allowed a reasonable
16 opportunity to obtain information and respond to the
17 claim; prohibiting a public adjuster from obstructing or
18 preventing certain persons from communicating with the
19 insured; prohibiting a licensed contractor or
20 subcontractor from adjusting a claim on behalf of an
21 insured if such contractor or subcontractor is not a
22 licensed public adjuster; providing an exception; amending
23 s. 626.8651, F.S.; requiring a public adjuster apprentice
24 to complete a minimum number of hours of continuing
25 education to qualify for licensure; amending s. 626.8796,
26 F.S.; specifying information requirements for public
27 adjuster contracts; creating s. 626.70132, F.S.; requiring
28 notices of a claim, supplemental claim, or reopened claim

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29 to be given to the insurer within a specified period after
 30 a windstorm or hurricane occurs; providing a definition
 31 for the term "supplemental claim" or "reopened claim";
 32 providing applicability; providing effective dates.

33
 34 Be It Enacted by the Legislature of the State of Florida:

35
 36 Section 1. Subsection (11) of section 626.854, Florida
 37 Statutes, is amended to read:

38 626.854 "Public adjuster" defined; prohibitions.—The
 39 Legislature finds that it is necessary for the protection of the
 40 public to regulate public insurance adjusters and to prevent the
 41 unauthorized practice of law.

42 (11) (a) If a public adjuster enters into a contract with
 43 an insured or claimant to reopen a claim or to file a
 44 supplemental claim that seeks additional payments for a claim
 45 that has been previously paid in part or in full or settled by
 46 the insurer, the public adjuster may not charge, agree to, or
 47 accept any compensation, payment, commission, fee, or other
 48 thing of value based on a previous settlement or previous claim
 49 payments by the insurer for the same cause of loss. The charge,
 50 compensation, payment, commission, fee, or other thing of value
 51 may be based only on the claim payments or settlement obtained
 52 through the work of the public adjuster after entering into the
 53 contract with the insured or claimant. Compensation for a
 54 reopened or supplemental claim may not exceed 30 percent of the
 55 reopened or supplemental claim payment and may not exceed the
 56 caps provided in paragraph (b) for the overall claim, inclusive

57 of the supplemental claim payment. ~~The contracts described in~~
 58 ~~this paragraph are not subject to the limitations in paragraph~~
 59 ~~(b).~~

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

63 1. Ten percent of the amount of insurance claim payments
 64 by the insurer for claims based on events that are the subject
 65 of a declaration of a state of emergency by the Governor. ~~This~~
 66 ~~provision applies to claims made during the period of 1 year~~
 67 ~~after the declaration of emergency.~~

68 2. Twenty percent of the amount of ~~all other~~ insurance
 69 claim payments by the insurer for claims that are not based on
 70 events that are the subject of a declaration of a state of
 71 emergency by the Governor.

72
 73 The provisions of subsections (5)-(13) apply only to residential
 74 property insurance policies and condominium association policies
 75 as defined in s. 718.111(11).

76 Section 2. Effective January 1, 2011, section 626.854,
 77 Florida Statutes, as amended by this act, is amended to read:

78 626.854 "Public adjuster" defined; prohibitions.—The
 79 Legislature finds that it is necessary for the protection of the
 80 public to regulate public insurance adjusters and to prevent the
 81 unauthorized practice of law.

82 (1) A "public adjuster" is any person, except a duly
 83 licensed attorney at law as hereinafter in s. 626.860 provided,
 84 who, for money, commission, or any other thing of value,

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85 prepares, completes, or files an insurance claim form for an
86 insured or third-party claimant or who, for money, commission,
87 or any other thing of value, acts or aids in any manner on
88 behalf of an insured or third-party claimant in negotiating for
89 or effecting the settlement of a claim or claims for loss or
90 damage covered by an insurance contract or who advertises for
91 employment as an adjuster of such claims, and also includes any
92 person who, for money, commission, or any other thing of value,
93 solicits, investigates, or adjusts such claims on behalf of any
94 such public adjuster.

95 (2) This definition does not apply to:

96 (a) A licensed health care provider or employee thereof
97 who prepares or files a health insurance claim form on behalf of
98 a patient.

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

101 (3) A public adjuster may not give legal advice. A public
102 adjuster may not act on behalf of or aid any person in
103 negotiating or settling a claim relating to bodily injury,
104 death, or noneconomic damages.

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

108 (5) A public adjuster may not directly or indirectly
109 through any other person or entity solicit an insured or
110 claimant by any means except on Monday through Saturday of each
111 week and only between the hours of 8 a.m. and 8 p.m. on those
112 days.

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

120 (7) An insured or claimant may cancel a public adjuster's
121 contract to adjust a claim without penalty or obligation within
122 3 business days after the date on which the contract is executed
123 or within 3 business days after the date on which the insured or
124 claimant has notified the insurer of the claim, by phone or in
125 writing, whichever is later. The public adjuster's contract
126 shall disclose to the insured or claimant his or her right to
127 cancel the contract and advise the insured or claimant that
128 notice of cancellation must be submitted in writing and sent by
129 certified mail, return receipt requested, or other form of
130 mailing which provides proof thereof, to the public adjuster at
131 the address specified in the contract; provided, during any
132 state of emergency as declared by the Governor and for a period
133 of 1 year after the date of loss, the insured or claimant shall
134 have 5 business days after the date on which the contract is
135 executed to cancel a public adjuster's contract.

136 (8) It is an unfair and deceptive insurance trade practice
137 pursuant to s. 626.9541 for a public adjuster or any other
138 person to circulate or disseminate any advertisement,
139 announcement, or statement containing any assertion,
140 representation, or statement with respect to the business of

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141 insurance which is untrue, deceptive, or misleading.

142 (a) For purposes of this section, the following
143 statements, if made in any public adjuster's advertisement or
144 solicitation, shall be considered deceptive or misleading:

145 1. A statement or representation that invites an insured
146 policyholder to submit a claim when the policyholder may not
147 have covered damage to insured property.

148 2. A statement or representation that invites an insured
149 policyholder to submit a claim when the claim has previously
150 been fully adjusted and paid.

151 3. A statement or representation that invites an insured
152 policyholder to submit a claim by offering monetary or other
153 valuable inducement.

154 4. A statement or representation that invites an insured
155 policyholder to submit a claim by stating that there is "no
156 risk" to the policyholder by submitting such claim.

157 5. Any statement or representation, or use of a logo or
158 shield, that would imply or could be mistakenly construed that
159 the solicitation was issued or distributed by a governmental
160 agency or is sanctioned or endorsed by a governmental agency.

161 (b) For purposes of this paragraph, the term "written
162 advertisement" includes only newspapers, magazines, flyers, and
163 bulk mailers. The following disclaimer, which is not required to
164 be printed on standard size business cards, shall be added in
165 bold print and capital letters in typeface no smaller than the
166 typeface of the body of the text to all written advertisements
167 by any public adjuster:

168 "THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD

169 | A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU
 170 | ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU
 171 | MAY DISREGARD THIS ADVERTISEMENT."

172 | (9) A public adjuster, a public adjuster apprentice, or
 173 | any person or entity acting on behalf of a public adjuster or
 174 | public adjuster apprentice may not give or offer to give a
 175 | monetary loan or advance to a client or prospective client.

176 | (10) A public adjuster, public adjuster apprentice, or any
 177 | individual or entity acting on behalf of a public adjuster or
 178 | public adjuster apprentice may not give or offer to give,
 179 | directly or indirectly, any article of merchandise having a
 180 | value in excess of \$25 to any individual for the purpose of
 181 | advertising or as an inducement to entering into a contract with
 182 | a public adjuster.

183 | (11) (a) If a public adjuster enters into a contract with
 184 | an insured or claimant to reopen a claim or to file a
 185 | supplemental claim that seeks additional payments for a claim
 186 | that has been previously paid in part or in full or settled by
 187 | the insurer, the public adjuster may not charge, agree to, or
 188 | accept any compensation, payment, commission, fee, or other
 189 | thing of value based on a previous settlement or previous claim
 190 | payments by the insurer for the same cause of loss. The charge,
 191 | compensation, payment, commission, fee, or other thing of value
 192 | may be based only on the claim payments or settlement obtained
 193 | through the work of the public adjuster after entering into the
 194 | contract with the insured or claimant. Compensation for a
 195 | reopened or supplemental claim may not exceed 30 percent of the
 196 | reopened or supplemental claim payment and may not exceed the

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197 caps provided in paragraph (b) for the overall claim, inclusive
198 of the supplemental claim payment.

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

202 1. Ten percent of the amount of insurance claim payments
203 by the insurer for claims based on events that are the subject
204 of a declaration of a state of emergency by the Governor.

205 2. Twenty percent of the amount of all other insurance
206 claim payments by the insurer for claims that are not based on
207 events that are the subject of a declaration of a state of
208 emergency by the Governor.

209 (12) Each public adjuster shall provide to the claimant or
210 insured a written estimate of the loss to assist in the
211 submission of a proof of loss or any other claim for payment of
212 insurance proceeds. The public adjuster shall retain such
213 written estimate for at least 5 years and shall make such
214 estimate available to the claimant or insured and the department
215 upon request.

216 (13) A public adjuster, public adjuster apprentice, or any
217 person acting on behalf of a public adjuster or apprentice may
218 not accept referrals of business from any person with whom the
219 public adjuster conducts business if there is any form or manner
220 of agreement to compensate the person, whether directly or
221 indirectly, for referring business to the public adjuster. A
222 public adjuster may not compensate any person, except for
223 another public adjuster, whether directly or indirectly, for the
224 principal purpose of referring business to the public adjuster.

225 (14) A company employee adjuster, independent adjuster,
 226 attorney, investigator, or other person acting on behalf of an
 227 insurer that needs access to an insured or claimant or to the
 228 insured property that is the subject of a claim shall provide at
 229 least 48 hours' notice to the insured, claimant, public
 230 adjuster, or legal representative prior to scheduling a meeting
 231 with the claimant or an onsite inspection of the insured
 232 property. The insured or claimant may deny access to the
 233 property if such notice has not been provided. The insured or
 234 claimant may waive the 48-hour notice.

235 (15) (a) A public adjuster shall make all reasonable and
 236 necessary efforts to ensure prompt notice of any property loss
 237 claim submitted to an insurer by or through the public adjuster
 238 or on which the public adjuster represents the insured at the
 239 time the claim or notice of loss is submitted to the insurer.
 240 The public adjuster shall ensure that notice is given to the
 241 insurer, the public adjuster's contract is timely provided to
 242 the insurer, the property is timely made available for
 243 inspection of the loss or damage by the insurer, and the insurer
 244 is given a reasonable and timely opportunity to interview the
 245 insured directly about the loss and claim. The insurer shall be
 246 allowed a reasonable opportunity to obtain necessary information
 247 to investigate and respond to the claim. The insurer shall meet
 248 or communicate with the public adjuster in an effort to reach
 249 agreement as to the scope of the covered loss under the
 250 insurance policy. This section does not impair the terms and
 251 conditions of the insurance policy in effect at the time the
 252 claim is filed.

253 (b) A public adjuster may not restrict or prevent an
 254 insurer, company employee adjuster, independent adjuster,
 255 attorney, investigator, or other person acting on behalf of the
 256 insurer from having reasonable access at reasonable times to an
 257 insured or claimant or to the insured property that is the
 258 subject of a claim.

259 (c) A public adjuster may not act or fail to reasonably
 260 act in any manner that would obstruct or prevent an insurer or
 261 insurer's adjuster from timely gaining access to conduct an
 262 inspection of any part of the insured property for which there
 263 is a claim for loss or damage to the property. The public
 264 adjuster that represents the insured may be present for the
 265 insurer's inspection of the property loss or damage, but, if the
 266 lack of availability of the public adjuster would otherwise
 267 delay access to or inspection of the insured property by the
 268 insurer, the public adjuster or the insured must provide
 269 alternative means for the insurer to gain access to the insured
 270 property to allow the insurer's prompt inspection of the loss or
 271 damage without the participation or presence of the public
 272 adjuster or the insured.

273 (16) A licensed contractor under part I of chapter 489, or
 274 a subcontractor, may not adjust a claim on behalf of an insured
 275 without being licensed and in compliance as a public adjuster
 276 under this chapter. However, this subsection does not apply to a
 277 licensed contractor that is preparing or has submitted a bid to
 278 a residential property owner who has suffered loss or damage
 279 covered by a property insurance policy, if such contractor is
 280 asked by the homeowner or the insurer to discuss or explain a

281 bid for construction or repair of covered property, and is doing
 282 so for usual and customary fees applicable to the work to be
 283 performed by the contractor as stated in the contract between
 284 the contractor and the insured.

285
 286 The provisions of subsections (5)-(16) ~~(5)-(13)~~ apply only to
 287 residential property insurance policies and condominium unit
 288 owner association policies as defined in s. 718.111(11).

289 Section 3. Effective January 1, 2011, subsections (7)
 290 through (11) of section 626.8651, Florida Statutes, are
 291 redesignated as subsections (8) through (12), respectively, and
 292 a new subsection (7) is added to that section to read:

293 626.8651 Public adjuster apprentice license;
 294 qualifications.—

295 (7) A public adjuster apprentice shall complete a minimum
 296 of 8 hours of continuing education specific to the practice of a
 297 public adjuster, 2 hours of which must relate to ethics, in
 298 order to qualify for licensure as a public adjuster. The
 299 continuing education must be in subjects designed to inform the
 300 licensee regarding the current insurance laws of this state for
 301 the purpose of enabling him or her to engage in business as an
 302 insurance adjuster fairly and without injury to the public and
 303 to adjust all claims in accordance with the insurance contract
 304 and the laws of this state.

305 Section 4. Effective January 1, 2011, section 626.8796,
 306 Florida Statutes, is amended to read:

307 626.8796 Public adjuster contracts; fraud statement.—

308 (1) All contracts for public adjuster services must be in

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309 writing and must prominently display the following statement on
 310 the contract: "Pursuant to s. 817.234, Florida Statutes, any
 311 person who, with the intent to injure, defraud, or deceive any
 312 insurer or insured, prepares, presents, or causes to be
 313 presented a proof of loss or estimate of cost or repair of
 314 damaged property in support of a claim under an insurance policy
 315 knowing that the proof of loss or estimate of claim or repairs
 316 contains any false, incomplete, or misleading information
 317 concerning any fact or thing material to the claim commits a
 318 felony of the third degree, punishable as provided in s.
 319 775.082, s. 775.083, or s. 775.084, Florida Statutes."

320 (2) A public adjuster contract must contain the following
 321 information: the full name, permanent business address, and
 322 license number of the public adjuster; the full name of the
 323 public adjusting firm; and the insured's full name and street
 324 address, together with a brief description of the loss. The
 325 contract must state the percentage of compensation for the
 326 public adjuster's services; the type of claim, including an
 327 emergency claim, nonemergency claim, or supplemental claim; the
 328 signatures of the public adjuster and the insured; and the
 329 signature date. An unaltered copy of the executed contract must
 330 be remitted to the insurer within 30 days after execution.

331 Section 5. Section 626.70132, Florida Statutes, is created
 332 to read:

333 626.70132 Duty to file windstorm or hurricane claim.—A
 334 claim, supplemental claim, or reopened claim under an insurance
 335 policy that provides personal lines residential coverage, as
 336 defined in s. 627.4025, for loss or damage caused by the peril

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337 of windstorm or hurricane is barred unless notice of the claim,
338 supplemental claim, or reopened claim was given to the insurer
339 in accordance with the terms of the policy within 3 years after
340 the hurricane first made landfall or the windstorm caused the
341 covered damage. For purposes of this section, the term
342 "supplemental claim" or "reopened claim" means a claim for
343 recovery of additional payments from the insurer for losses from
344 the same hurricane or windstorm for which the insurer has
345 previously paid pursuant to the initial claim. This section may
346 not be interpreted to affect any applicable limitation on civil
347 actions provided in s. 95.11 for claims, supplemental claims, or
348 reopened claims timely filed under this section.

349 Section 6. Except as otherwise expressly provided by this
350 act, this act shall take effect June 1, 2010.