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LEGISLATIVE ACTION

Senate

House

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Floor: 1/AD/2R

04/21/2010 03:21 PM

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Senator Bennett moved the following:

**Senate Amendment (with title amendment)**

Delete lines 52 - 325

and insert:

Section 1. Effective June 1, 2010, subsection (11) of section 626.854, Florida Statutes, is amended to read:

626.854 "Public adjuster" defined; prohibitions.—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.

(11) (a) If a public adjuster enters into a contract with an insured or claimant to reopen a claim or to file a supplemental claim that seeks additional payments for a claim that has been



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14 previously paid in part or in full or settled by the insurer,  
15 the public adjuster may not charge, agree to, or accept any  
16 compensation, payment, commission, fee, or other thing of value  
17 based on a previous settlement or previous claim payments by the  
18 insurer for the same cause of loss. The charge, compensation,  
19 payment, commission, fee, or other thing of value may be based  
20 only on the claim payments or settlement obtained through the  
21 work of the public adjuster after entering into the contract  
22 with the insured or claimant. Compensation for a reopened or  
23 supplemental claim may not exceed 20 percent of the reopened or  
24 supplemental claim payment. The contracts described in this  
25 paragraph are not subject to the limitations in paragraph (b).

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

29 1. Ten percent of the amount of insurance claim payments by  
30 the insurer for claims based on events that are the subject of a  
31 declaration of a state of emergency by the Governor. This  
32 provision applies to claims made during the period of 1 year  
33 after the declaration of emergency. After the period of 1 year,  
34 the limitations in subparagraph 2. apply.

35 2. Twenty percent of the amount of ~~all other~~ insurance  
36 claim payments by the insurer for claims that are not based on  
37 events that are the subject of a declaration of a state of  
38 emergency by the Governor.

39  
40 The provisions of subsections (5)-(13) apply only to residential  
41 property insurance policies and condominium association policies  
42 as defined in s. 718.111(11).



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43           Section 2. Section 626.854, Florida Statutes, as amended by  
44 this act, is amended to read:

45           626.854 "Public adjuster" defined; prohibitions.—The  
46 Legislature finds that it is necessary for the protection of the  
47 public to regulate public insurance adjusters and to prevent the  
48 unauthorized practice of law.

49           (1) A "public adjuster" is any person, except a duly  
50 licensed attorney at law as hereinafter in s. 626.860 provided,  
51 who, for money, commission, or any other thing of value,  
52 prepares, completes, or files an insurance claim form for an  
53 insured or third-party claimant or who, for money, commission,  
54 or any other thing of value, acts or aids in any manner on  
55 behalf of an insured or third-party claimant in negotiating for  
56 or effecting the settlement of a claim or claims for loss or  
57 damage covered by an insurance contract or who advertises for  
58 employment as an adjuster of such claims, and also includes any  
59 person who, for money, commission, or any other thing of value,  
60 solicits, investigates, or adjusts such claims on behalf of any  
61 such public adjuster.

62           (2) This definition does not apply to:

63           (a) A licensed health care provider or employee thereof who  
64 prepares or files a health insurance claim form on behalf of a  
65 patient.

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

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



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

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

80 (6) A public adjuster may not directly or indirectly  
81 through any other person or entity initiate contact or engage in  
82 face-to-face or telephonic solicitation or enter into a contract  
83 with any insured or claimant under an insurance policy until at  
84 least 48 hours after the occurrence of an event that may be the  
85 subject of a claim under the insurance policy unless contact is  
86 initiated by the insured or claimant.

87 (7) An insured or claimant may cancel a public adjuster's  
88 contract to adjust a claim without penalty or obligation within  
89 3 business days after the date on which the contract is executed  
90 or within 3 business days after the date on which the insured or  
91 claimant has notified the insurer of the claim, by phone or in  
92 writing, whichever is later. The public adjuster's contract  
93 shall disclose to the insured or claimant his or her right to  
94 cancel the contract and advise the insured or claimant that  
95 notice of cancellation must be submitted in writing and sent by  
96 certified mail, return receipt requested, or other form of  
97 mailing which provides proof thereof, to the public adjuster at  
98 the address specified in the contract; provided, during any  
99 state of emergency as declared by the Governor and for a period  
100 of 1 year after the date of loss, the insured or claimant shall



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101 have 5 business days after the date on which the contract is  
102 executed to cancel a public adjuster's contract.

103 (8) It is an unfair and deceptive insurance trade practice  
104 pursuant to s. 626.9541 for a public adjuster or any other  
105 person to circulate or disseminate any advertisement,  
106 announcement, or statement containing any assertion,  
107 representation, or statement with respect to the business of  
108 insurance which is untrue, deceptive, or misleading.

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

112 1. A statement or representation that invites an insured  
113 policyholder to submit a claim when the policyholder does not  
114 have covered damage to insured property.

115 2. Any statement or representation that invites an insured  
116 policyholder to submit a claim by offering monetary or other  
117 valuable inducement.

118 3. A statement or representation that invites an insured  
119 policyholder to submit a claim by stating that there is "no  
120 risk" to the policyholder by submitting such claim.

121 4. Any statement or representation, or use of a logo or  
122 shield, that would imply or could be mistakenly construed that  
123 the solicitation was issued or distributed by a governmental  
124 agency or is sanctioned or endorsed by a governmental agency.

125 (b) For purposes of this paragraph, the term "written  
126 advertisement" includes only newspapers, magazines, flyers, and  
127 bulk mailers. The following disclaimer, which is not required to  
128 be printed on standard size business cards, shall be added in  
129 bold print and capital letters in typeface no smaller than the



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130 typeface of the body of the text to all written advertisements  
131 by any public adjuster:

132 "THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD  
133 A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU  
134 ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU  
135 MAY DISREGARD THIS ADVERTISEMENT."

136 (9) A public adjuster, a public adjuster apprentice, or any  
137 person or entity acting on behalf of a public adjuster or public  
138 adjuster apprentice may not give or offer to give a monetary  
139 loan or advance to a client or prospective client.

140 (10) A public adjuster, public adjuster apprentice, or any  
141 individual or entity acting on behalf of a public adjuster or  
142 public adjuster apprentice may not give or offer to give,  
143 directly or indirectly, any article of merchandise having a  
144 value in excess of \$25 to any individual for the purpose of  
145 advertising or as an inducement to entering into a contract with  
146 a public adjuster.

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



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159 supplemental claim may not exceed 20 percent of the reopened or  
160 supplemental claim payment. The contracts described in this  
161 paragraph are not subject to the limitations in paragraph (b).

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

165 1. Ten percent of the amount of insurance claim payments by  
166 the insurer for claims based on events that are the subject of a  
167 declaration of a state of emergency by the Governor. This  
168 provision applies to claims made during the period of 1 year  
169 after the declaration of emergency. After the period of 1 year,  
170 the limitations in subparagraph 2. apply.

171 2. Twenty percent of the amount of insurance claim payments  
172 by the insurer for claims that are not based on events that are  
173 the subject of a declaration of a state of emergency by the  
174 Governor.

175 (12) Each public adjuster shall provide to the claimant or  
176 insured a written estimate of the loss to assist in the  
177 submission of a proof of loss or any other claim for payment of  
178 insurance proceeds. The public adjuster shall retain such  
179 written estimate for at least 5 years and shall make such  
180 estimate available to the claimant or insured and the department  
181 upon request.

182 (13) A public adjuster, public adjuster apprentice, or any  
183 person acting on behalf of a public adjuster or apprentice may  
184 not accept referrals of business from any person with whom the  
185 public adjuster conducts business if there is any form or manner  
186 of agreement to compensate the person, whether directly or  
187 indirectly, for referring business to the public adjuster. A



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188 public adjuster may not compensate any person, except for  
189 another public adjuster, whether directly or indirectly, for the  
190 principal purpose of referring business to the public adjuster.

191 (14) A company employee adjuster, independent adjuster,  
192 attorney, investigator, or other persons acting on behalf of an  
193 insurer that needs access to an insured or claimant or to the  
194 insured property that is the subject of a claim shall provide at  
195 least 48 hours' notice to the insured or claimant, public  
196 adjuster, or legal representative before scheduling a meeting  
197 with the claimant or an onsite inspection of the insured  
198 property. The insured or claimant may deny access to the  
199 property if this notice has not been provided. The insured or  
200 claimant may waive this 48-hour notice.

201 (15) (a) A public adjuster shall ensure prompt notice of any  
202 property loss claim submitted to an insurer by or through a  
203 public adjuster or on which a public adjuster represents the  
204 insured at the time the claim or notice of loss is submitted to  
205 the insurer. The public adjuster shall ensure that notice is  
206 given to the insurer, the public adjuster's contract is provided  
207 to the insurer, the property is made available for inspection of  
208 the loss or damage by the insurer, and the insurer is given an  
209 opportunity to interview the insured directly about the loss and  
210 claim. The insurer shall be allowed to obtain necessary  
211 information to investigate and respond to the claim. The insurer  
212 may not exclude the public adjuster from its in-person meetings  
213 with the insured. The insurer shall meet or communicate with the  
214 public adjuster in an effort to reach agreement as to the scope  
215 of the covered loss under the insurance policy. This section  
216 does not impair the terms and conditions of the insurance policy





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217 in effect at the time the claim is filed.

218 (b) A public adjuster may not restrict or prevent an  
219 insurer, company employee adjuster, independent adjuster,  
220 attorney, investigator, or other person acting on behalf of the  
221 insurer from having reasonable access at reasonable times to any  
222 insured or claimant or to the insured property that is the  
223 subject of a claim.

224 (c) A public adjuster may not act or fail to reasonably act  
225 in any manner that would obstruct or prevent an insurer or  
226 insurer's adjuster from timely gaining access to conduct an  
227 inspection of any part of the insured property for which there  
228 is a claim for loss or damage to the property. The public  
229 adjuster that represents the insured may be present for the  
230 insurer's inspection of the property loss or damage but, if the  
231 lack of availability of the public adjuster would otherwise  
232 delay the access to or the inspection of the insured property by  
233 the insurer, the public adjuster or the insured must allow the  
234 insurer to gain access to the insured property to facilitate the  
235 insurer's prompt inspection of the loss or damage without the  
236 participation or presence of the public adjuster or insured.

237 (16) A licensed contractor under part I of chapter 489, or  
238 a subcontractor, may not adjust a claim on behalf of an insured  
239 without being licensed and compliant as a public adjuster under  
240 this chapter. However, if asked by the residential property  
241 owner who has suffered loss or damage covered by a property  
242 insurance policy, or the insurer of such property, a licensed  
243 contractor may discuss or explain a bid for construction or  
244 repair of covered property if the contractor is doing so for  
245 usual and customary fees applicable to the work to be performed



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246 as stated in the contract between the contractor and the  
247 insured.

248  
249 The provisions of subsections (5)-(16) ~~(5)-(13)~~ apply only to  
250 residential property insurance policies and condominium unit  
251 owner association policies as defined in s. 718.111(11).

252 Section 3. Present subsections (7) through (11) of section  
253 626.8651, Florida Statutes, are redesignated as subsections (8)  
254 through (12), respectively, and a new subsection (7) is added to  
255 that section, to read:

256 626.8651 Public adjuster apprentice license;  
257 qualifications.-

258 (7) A public adjuster apprentice shall complete a minimum  
259 of 8 hours of continuing education specific to the practice of a  
260 public adjuster, 2 hours of which must relate to ethics, in  
261 order to qualify for licensure as a public adjuster. The  
262 continuing education must be in subjects designed to inform the  
263 licensee regarding the current insurance laws of this state for  
264 the purpose of enabling him or her to engage in business as an  
265 insurance adjuster fairly and without injury to the public and  
266 to adjust all claims in accordance with the insurance contract  
267 and the laws of this state.

268 Section 4. Section 626.8796, Florida Statutes, is amended  
269 to read:

270 626.8796 Public adjuster contracts; fraud statement.-

271 (1) All contracts for public adjuster services must be in  
272 writing and must prominently display the following statement on  
273 the contract: "Pursuant to s. 817.234, Florida Statutes, any  
274 person who, with the intent to injure, defraud, or deceive any



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275 insurer or insured, prepares, presents, or causes to be  
276 presented a proof of loss or estimate of cost or repair of  
277 damaged property in support of a claim under an insurance policy  
278 knowing that the proof of loss or estimate of claim or repairs  
279 contains any false, incomplete, or misleading information  
280 concerning any fact or thing material to the claim commits a  
281 felony of the third degree, punishable as provided in s.  
282 775.082, s. 775.083, or s. 775.084, Florida Statutes."

283 (2) A public adjuster contract must contain the following  
284 information: full name, permanent business address, and license  
285 number of the public adjuster, the full name of the public  
286 adjusting firm, and the insured's full name and street address,  
287 together with a brief description of the loss. The contract must  
288 state the percentage of compensation for the public adjuster's  
289 services, the type of claim, including an emergency claim,  
290 nonemergency claim, or supplemental claim, the signatures of the  
291 public adjuster and all named insureds, and the signature date.  
292 If all named insureds signatures are not available, the public  
293 adjuster shall submit an affidavit signed by the available named  
294 insureds attesting that they have authority to enter into the  
295 contract and to settle all claim issues on behalf of all named  
296 insureds. An unaltered copy of the executed contract must be  
297 remitted to the insurer within 30 days after execution.

298 Section 5. Effective June 1, 2010, section 626.70132,  
299 Florida Statutes, is created to read:

300 626.70132 Duty to file windstorm or hurricane claim.—A  
301 claim, supplemental claim, or reopened claim under an insurance  
302 policy that provides personal lines residential coverage, as  
303 defined in s. 627.4025, for loss or damage caused by the peril



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304 of windstorm or hurricane is barred unless notice of the claim,  
305 supplemental claim, or reopened claim was given to the insurer  
306 in accordance with the terms of the policy within 3 years after  
307 the hurricane first made landfall or the windstorm caused the  
308 covered damage. For purposes of this section, the term  
309 "supplemental claim" or "reopened claim" means any additional  
310 claim for recovery from the insurer for losses from the same  
311 hurricane or windstorm for which the insurer has previously  
312 adjusted pursuant to the initial claim. This section may not be  
313 interpreted to affect any applicable limitation on civil actions  
314 provided in s. 95.11 for claims, supplemental claims, or  
315 reopened claims timely filed under this section.

316 Section 6. Except as otherwise expressly provided in this  
317 act and except for this section, which shall take effect June 1,  
318 2010, this act shall take effect January 1, 2011.

319  
320 ===== T I T L E A M E N D M E N T =====

321 And the title is amended as follows:

322 Delete lines 47 - 48

323 and insert:

324 for the terms "supplemental claim" or "reopened  
325 claim"; providing applicability; providing effective  
326 dates.