



720078

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/13/2010	.	
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The Committee on Judiciary (Fasano) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 106 - 299  
and insert:

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

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

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



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14           4. Any statement or representation, or use of a logo or  
15 shield, that would imply or could be mistakenly construed that  
16 the solicitation was issued or distributed by a governmental  
17 agency or is sanctioned or endorsed by a governmental agency.

18           (b) For purposes of this paragraph, the term "written  
19 advertisement" includes only newspapers, magazines, flyers,  
20 brochures, and bulk mailers. The following disclaimer, which is  
21 not required to be printed on standard size business cards,  
22 shall be added in bold print and capital letters in typeface no  
23 smaller than the typeface of the body of the text to all written  
24 advertisements by any public adjuster:

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

29           (9) A public adjuster, a public adjuster apprentice, or any  
30 person or entity acting on behalf of a public adjuster or public  
31 adjuster apprentice may not give or offer to give a monetary  
32 loan or advance to a client or prospective client.

33           (10) A public adjuster, public adjuster apprentice, or any  
34 individual or entity acting on behalf of a public adjuster or  
35 public adjuster apprentice may not give or offer to give,  
36 directly or indirectly, any article of merchandise having a  
37 value in excess of \$25 to any individual for the purpose of  
38 advertising or as an inducement to entering into a contract with  
39 a public adjuster.

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



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43 previously paid in part or in full or settled by the insurer,  
44 the public adjuster may not charge, agree to, or accept any  
45 compensation, payment, commission, fee, or other thing of value  
46 based on a previous settlement or previous claim payments by the  
47 insurer for the same cause of loss. The charge, compensation,  
48 payment, commission, fee, or other thing of value may be based  
49 only on the claim payments or settlement obtained through the  
50 work of the public adjuster after entering into the contract  
51 with the insured or claimant. Compensation for a reopened or  
52 supplemental claim may not exceed 20 percent of the reopened or  
53 supplemental claim payment. The contracts described in this  
54 paragraph are not subject to the limitations in paragraph (b).

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

58 1. Ten percent of the amount of insurance claim payments by  
59 the insurer for claims based on events that are the subject of a  
60 declaration of a state of emergency by the Governor. This  
61 provision applies to claims made during the period of 1 year  
62 after the declaration of emergency. After the period of 1 year,  
63 the limitations in subparagraph 2. apply.

64 2. Twenty percent of the amount of ~~all other~~ insurance  
65 claim payments by the insurer for claims that are not based on  
66 events that are the subject of a declaration of a state of  
67 emergency by the Governor.

68 (12) Each public adjuster shall provide to the claimant or  
69 insured a written estimate of the loss to assist in the  
70 submission of a proof of loss or any other claim for payment of  
71 insurance proceeds. The public adjuster shall retain such



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72 written estimate for at least 5 years and shall make such  
73 estimate available to the claimant or insured and the department  
74 upon request.

75 (13) A public adjuster, public adjuster apprentice, or any  
76 person acting on behalf of a public adjuster or apprentice may  
77 not accept referrals of business from any person with whom the  
78 public adjuster conducts business if there is any form or manner  
79 of agreement to compensate the person, whether directly or  
80 indirectly, for referring business to the public adjuster. A  
81 public adjuster may not compensate any person, except for  
82 another public adjuster, whether directly or indirectly, for the  
83 principal purpose of referring business to the public adjuster.

84 (14) A company employee adjuster, independent adjuster,  
85 attorney, investigator, or other persons acting on behalf of an  
86 insurer that needs access to an insured or claimant or to the  
87 insured property that is the subject of a claim shall provide at  
88 least 48 hours' notice to the insured or claimant, public  
89 adjuster, or legal representative before scheduling a meeting  
90 with the claimant or an onsite inspection of the insured  
91 property. The insured or claimant may deny access to the  
92 property if this notice has not been provided. The insured or  
93 claimant may waive this 48-hour notice.

94 (15) (a) A public adjuster shall ensure prompt notice of any  
95 property loss claim submitted to an insurer by or through a  
96 public adjuster or on which a public adjuster represents the  
97 insured at the time the claim or notice of loss is submitted to  
98 the insurer. The public adjuster shall ensure that notice is  
99 given to the insurer, the public adjuster's contract is provided  
100 to the insurer, the property is made available for inspection of



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101 the loss or damage by the insurer, and the insurer is given an  
102 opportunity to interview the insured directly about the loss and  
103 claim. The insurer shall be allowed to obtain necessary  
104 information to investigate and respond to the claim. The insurer  
105 may not exclude the public adjuster from its in-person meetings  
106 with the insured. The insurer shall meet or communicate with the  
107 public adjuster in an effort to reach agreement as to the scope  
108 of the covered loss under the insurance policy. This section  
109 does impair the terms and conditions of the insurance policy in  
110 effect at the time the claim is filed.

111 (b) A public adjuster may not restrict or prevent an  
112 insurer, company employee adjuster, independent adjuster,  
113 attorney, investigator, or other person acting on behalf of the  
114 insurer from having reasonable access at reasonable times to any  
115 insured or claimant or to the insured property that is the  
116 subject of a claim.

117 (c) A public adjuster may not act or fail to reasonably act  
118 in any manner that would obstruct or prevent an insurer or  
119 insurer's adjuster from timely gaining access to conduct an  
120 inspection of any part of the insured property for which there  
121 is a claim for loss or damage to the property. The public  
122 adjuster that represents the insured may be present for the  
123 insurer's inspection of the property loss or damage but, if the  
124 lack of availability of the public adjuster would otherwise  
125 delay the access to or the inspection of the insured property by  
126 the insurer, the public adjuster or the insured must allow the  
127 insurer to gain access to the insured property to facilitate the  
128 insurer's prompt inspection of the loss or damage without the  
129 participation or presence of the public adjuster or insured.



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130       (16) A licensed contractor under part I of chapter 489, or  
131 a subcontractor, may not adjust a claim on behalf of an insured  
132 without being licensed and compliant as a public adjuster under  
133 this chapter. However, if asked by the residential property  
134 owner who has suffered loss or damage covered by a property  
135 insurance policy, or the insurer of such property, a licensed  
136 contractor may discuss or explain a bid for construction or  
137 repair of covered property if the contractor is doing so for  
138 usual and customary fees applicable to the work to be performed  
139 as stated in the contract between the contractor and the  
140 insured.

141  
142 The provisions of subsections (5)-(16) ~~(5)-(13)~~ apply only to  
143 residential property insurance policies and condominium unit  
144 owner association policies as defined in s. 718.111(11).

145       Section 2. Present subsections (7) through (11) of section  
146 626.8651, Florida Statutes, are redesignated as subsections (8)  
147 through (12), respectively, and a new subsection (7) is added to  
148 that section, to read:

149       626.8651 Public adjuster apprentice license;  
150 qualifications.—

151       (7) A public adjuster apprentice shall complete a minimum  
152 of 8 hours of continuing education specific to the practice of a  
153 public adjuster, 2 hours of which must relate to ethics, in  
154 order to qualify for licensure as a public adjuster. The  
155 continuing education must be in subjects designed to inform the  
156 licensee regarding the current insurance laws of this state for  
157 the purpose of enabling him or her to engage in business as an  
158 insurance adjuster fairly and without injury to the public and



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159 to adjust all claims in accordance with the policy or contract  
160 and the laws of this state.

161 Section 3. Section 626.8796, Florida Statutes, is amended  
162 to read:

163 626.8796 Public adjuster contracts; fraud statement.-

164 (1) All contracts for public adjuster services must be in  
165 writing and must prominently display the following statement on  
166 the contract: "Pursuant to s. 817.234, Florida Statutes, any  
167 person who, with the intent to injure, defraud, or deceive any  
168 insurer or insured, prepares, presents, or causes to be  
169 presented a proof of loss or estimate of cost or repair of  
170 damaged property in support of a claim under an insurance policy  
171 knowing that the proof of loss or estimate of claim or repairs  
172 contains any false, incomplete, or misleading information  
173 concerning any fact or thing material to the claim commits a  
174 felony of the third degree, punishable as provided in s.  
175 775.082, s. 775.083, or s. 775.084, Florida Statutes."

176 (2) A public adjuster contract must contain the following  
177 information: full name, permanent business address, and license  
178 number of the public adjuster, the full name of the public  
179 adjusting firm, and the insured's full name and street address,  
180 together with a brief description of the loss. The contract must  
181 state the percentage of compensation for the public adjuster's  
182 services, the type of claim, including an emergency claim,  
183 nonemergency claim, or supplemental claim, the signatures of the  
184 public adjuster and all named insureds, and the signature date.  
185 If all named insureds signatures are not available, the public  
186 adjuster shall submit an affidavit signed by the available named  
187 insureds attesting that they have authority to enter into the



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188 contract and to settle all claim issues on behalf of all named  
189 insureds. An unadulterated copy of the executed contract must be  
190 remitted to the insurer within 30 days after execution.

191 Section 4. Section 626.70132, Florida Statutes, is created  
192 to read:

193 626.70132 Duty to file windstorm or hurricane claim.—A  
194 claim, supplemental claim, or reopened claim under an insurance  
195 policy that provides personal lines residential coverage, as  
196 defined in s. 627.4025, for loss or damage caused by the peril  
197 of windstorm or hurricane is barred unless notice of the claim,  
198 supplemental claim, or reopened claim was given to the insurer  
199 in accordance with the terms of the policy within 3 years after  
200 the hurricane first made landfall or the windstorm caused the  
201 covered damage. For purposes of this section, the term  
202 “supplemental or reopened claim” means a claim for recovery of  
203 additional payments from the insurer for losses from the same  
204 hurricane or windstorm for which the insurer has previously  
205 adjusted pursuant to the initial claim. This section may not be  
206 interpreted to affect any applicable limitation on civil actions  
207 provided in s. 95.11 for claims, supplemental claims, or  
208 reopened claims timely filed under this section.

209 Section 5. This act shall take effect January 1, 2011.

210  
211 ===== T I T L E A M E N D M E N T =====

212 And the title is amended as follows:

213 Delete lines 12 - 22

214 and insert:

215 supplemental claim; requiring certain persons who act  
216 on behalf of an insurer to provide notice to the





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217 insurer, claimant, public adjuster, or legal  
218 representative for an onsite inspection of the insured  
219 property; authorizing the insured or claimant to deny  
220 access to the property if notice is not provided;  
221 requiring the public adjuster to ensure prompt notice  
222 of certain property loss claims; providing that an  
223 insurer be allowed to interview the insured directly  
224 about the loss claim; prohibiting the insurer from  
225 obstructing or preventing the public adjuster from  
226 communicating with the insured; requiring that the  
227 insurer communicate with the public adjuster in an  
228 effort to reach agreement as to the scope of the  
229 covered loss under the insurance policy; prohibiting a  
230 public adjuster from restricting or preventing persons  
231 acting on behalf of the insured from having reasonable  
232 access to the insured or the insured's property;  
233 prohibiting a public adjuster from restricting or  
234 preventing the insured's adjuster from having  
235 reasonable inspecting the insured's property;  
236 authorizing the insured's adjuster to be present for  
237 the inspection; prohibiting a licensed contractor or  
238 subcontractor from adjusting a claim on behalf of an  
239 insured if such contractor or subcontractor is not a  
240 licensed public adjuster; providing an exception;