

By the Committee on Banking and Insurance; and Senator Bennett

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1 A bill to be entitled
2 An act relating to public adjusters; amending s.
3 626.854, F.S.; providing statements that may be
4 considered deceptive or misleading if made in any
5 public adjuster's advertisement or solicitation;
6 providing a definition for the term "written
7 advertisement"; requiring that a disclaimer be
8 included in any public adjuster's written
9 advertisement; providing requirements for such
10 disclaimer; providing limitations on the amount of
11 compensation that may be received for a reopened or
12 supplemental claim; requiring that a public adjuster
13 make a reasonable and necessary effort to ensure
14 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
18 or preventing certain persons from communicating with
19 the 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;
23 amending s. 626.8651, F.S.; requiring that a public
24 adjuster apprentice complete a minimum number of hours
25 of continuing education to qualify for licensure;
26 amending s. 626.8796, F.S.; providing requirements for
27 a public adjuster contract; creating s. 626.70132,
28 F.S.; requiring that notice of a claim, supplemental
29 claim, or reopened claim be given to the insurer

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30 within a specified period after a windstorm or
31 hurricane occurs; providing a definition for the term
32 "supplemental or reopened claim"; providing
33 applicability; providing an effective date.
34

35 Be It Enacted by the Legislature of the State of Florida:
36

37 Section 1. Section 626.854, Florida Statutes, is amended to
38 read:

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

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

56 (2) This definition does not apply to:

57 (a) A licensed health care provider or employee thereof who
58 prepares or files a health insurance claim form on behalf of a

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59 patient.

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

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

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

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

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

81 (7) An insured or claimant may cancel a public adjuster's
82 contract to adjust a claim without penalty or obligation within
83 3 business days after the date on which the contract is executed
84 or within 3 business days after the date on which the insured or
85 claimant has notified the insurer of the claim, by phone or in
86 writing, whichever is later. The public adjuster's contract
87 shall disclose to the insured or claimant his or her right to

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88 cancel the contract and advise the insured or claimant that
89 notice of cancellation must be submitted in writing and sent by
90 certified mail, return receipt requested, or other form of
91 mailing which provides proof thereof, to the public adjuster at
92 the address specified in the contract; provided, during any
93 state of emergency as declared by the Governor and for a period
94 of 1 year after the date of loss, the insured or claimant shall
95 have 5 business days after the date on which the contract is
96 executed to cancel a public adjuster's contract.

97 (8) It is an unfair and deceptive insurance trade practice
98 pursuant to s. 626.9541 for a public adjuster or any other
99 person to circulate or disseminate any advertisement,
100 announcement, or statement containing any assertion,
101 representation, or statement with respect to the business of
102 insurance which is untrue, deceptive, or misleading.

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

106 1. A statement or representation that invites an insured
107 policyholder to submit a claim when the policyholder may not
108 have covered damage to insured property, or the claim has
109 previously been fully adjusted and paid, by offering monetary or
110 other valuable inducement, or by stating that there is "no risk"
111 to the policyholder by submitting such claim.

112 2. Any statement or representation, or use of a logo or
113 shield, that would imply or could be mistakenly construed that
114 the solicitation was issued or distributed by a governmental
115 agency or is sanctioned or endorsed by a governmental agency.

116 (b) For purposes of this paragraph, the term "written

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117 advertisement" includes only newspapers, magazines, flyers,
118 brochures, and mailers. The following disclaimer, which is not
119 required to be printed on standard size business cards, shall be
120 added in bold print and capital letters in typeface no smaller
121 than the typeface of the body of the text to all written
122 advertisements by any public adjuster:

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

127 (9) A public adjuster, a public adjuster apprentice, or any
128 person or entity acting on behalf of a public adjuster or public
129 adjuster apprentice may not give or offer to give a monetary
130 loan or advance to a client or prospective client.

131 (10) A public adjuster, public adjuster apprentice, or any
132 individual or entity acting on behalf of a public adjuster or
133 public adjuster apprentice may not give or offer to give,
134 directly or indirectly, any article of merchandise having a
135 value in excess of \$25 to any individual for the purpose of
136 advertising or as an inducement to entering into a contract with
137 a public adjuster.

138 (11) (a) If a public adjuster enters into a contract with an
139 insured or claimant to reopen a claim or to file a supplemental
140 claim that seeks additional payments for a claim that has been
141 previously paid in part or in full or settled by the insurer,
142 the public adjuster may not charge, agree to, or accept any
143 compensation, payment, commission, fee, or other thing of value
144 based on a previous settlement or previous claim payments by the
145 insurer for the same cause of loss. The charge, compensation,

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146 payment, commission, fee, or other thing of value may be based
147 only on the claim payments or settlement obtained through the
148 work of the public adjuster after entering into the contract
149 with the insured or claimant. Compensation for a reopened or
150 supplemental claim may not exceed 30 percent of the reopened or
151 supplemental claim payment and may not exceed the caps provided
152 in paragraph (b) for the overall claim, inclusive of the
153 supplemental claim payment. ~~The contracts described in this~~
154 ~~paragraph are not subject to the limitations in paragraph (b).~~

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

158 1. Ten percent of the amount of insurance claim payments by
159 the insurer for claims based on events that are the subject of a
160 declaration of a state of emergency by the Governor. This
161 provision applies to claims made during the period of 1 year
162 after the declaration of emergency.

163 2. Twenty percent of the amount of ~~all other~~ insurance
164 claim payments by the insurer for claims that are not based on
165 events that are the subject of a declaration of a state of
166 emergency by the Governor.

167 (12) Each public adjuster shall provide to the claimant or
168 insured a written estimate of the loss to assist in the
169 submission of a proof of loss or any other claim for payment of
170 insurance proceeds. The public adjuster shall retain such
171 written estimate for at least 5 years and shall make such
172 estimate available to the claimant or insured and the department
173 upon request.

174 (13) A public adjuster, public adjuster apprentice, or any

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175 person acting on behalf of a public adjuster or apprentice may
176 not accept referrals of business from any person with whom the
177 public adjuster conducts business if there is any form or manner
178 of agreement to compensate the person, whether directly or
179 indirectly, for referring business to the public adjuster. A
180 public adjuster may not compensate any person, except for
181 another public adjuster, whether directly or indirectly, for the
182 principal purpose of referring business to the public adjuster.

183 (14) (a) A public adjuster shall make all reasonable and
184 necessary efforts to ensure prompt notice of any property loss
185 claim submitted to an insurer by or through a public adjuster or
186 on which a public adjuster represents the insured at the time
187 the claim or notice of loss is submitted to the insurer. The
188 public adjuster shall ensure that notice is given to the
189 insurer, the public adjuster's contract is timely provided to
190 the insurer, the property is timely made available for
191 inspection of the loss or damage by the insurer, and the insurer
192 is given a reasonable and timely opportunity to interview the
193 insured directly about the loss and claim. The insurer shall be
194 allowed a reasonable opportunity to obtain necessary information
195 to fully evaluate and respond to the claim. If the insurer
196 receives prompt notice of the claim, is given timely access to
197 insured property to inspect the loss or damage and interview the
198 insured, and determines that coverage exists for the claimed
199 loss, the insurer shall timely meet or communicate with the
200 public adjuster in an effort to reach agreement as to the scope
201 of the covered loss under the insurance policy.

202 (b) A public adjuster may not obstruct or prevent an
203 insurer, company employee adjuster, independent adjuster,

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204 investigator, or other person acting on behalf of the insurer
205 from communicating directly with an insured during its
206 inspection of a loss to an insured property, obstruct an
207 insurer's efforts to gather information to evaluate or respond
208 to a pending claim, obstruct or prevent an insurer or insurer's
209 adjuster from timely gaining access to conduct an inspection of
210 any part of the insured property, or act in any manner to
211 prevent direct communication by the insurer or its adjuster with
212 an insured. The public adjuster representing the insured may be
213 present for the insurer's inspection of the property loss or
214 damage; however, if the lack of availability of the public
215 adjuster would otherwise delay the access to or inspection of
216 the insured property by the insurer, the insurer may gain access
217 to the property and meet with the insured without the public
218 adjuster.

219 (15) A licensed contractor under part I of chapter 489, or
220 subcontractor, may not adjust a claim on behalf of an insured
221 without being licensed as a public adjuster under this chapter.
222 However, this subsection does not apply to a licensed contractor
223 or subcontractor that is preparing or has submitted a bid to a
224 residential property owner who has suffered loss or damage
225 covered by a property insurance policy, if such contractor is
226 asked by the homeowner or the insurer to discuss or explain a
227 bid for construction or repair of covered property, and is doing
228 so for usual and customary fees applicable to the work to be
229 performed by the contractor or subcontractor. A subcontractor
230 may discuss a bid encompassing only the specific specialty for
231 which the subcontractor has submitted a bid and for which the
232 subcontractor is qualified. A subcontractor may not represent a

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233 homeowner regarding an overall covered claim to construct or
234 repair covered property.

235

236 The provisions of subsections (5)-(15) ~~(5)-(13)~~ apply only to
237 residential property insurance policies and condominium
238 association policies as defined in s. 718.111(11).

239 Section 2. Present subsections (7) through (11) of section
240 626.8651, Florida Statutes, are redesignated as subsections (8)
241 through (12), respectively, and a new subsection (7) is added to
242 that section, to read:

243 626.8651 Public adjuster apprentice license;
244 qualifications.—

245 (7) A public adjuster apprentice shall complete a minimum
246 of 8 hours of continuing education specific to the practice of a
247 public adjuster, 2 hours of which must relate to ethics, in
248 order to qualify for licensure as a public adjuster. The
249 continuing education must be in subjects designed to inform the
250 licensee regarding the current insurance laws of this state for
251 the purpose of enabling him or her to engage in business as an
252 insurance adjuster fairly and without injury to the public and
253 to adjust all claims in accordance with the policy or contract
254 and the laws of this state.

255 Section 3. Section 626.8796, Florida Statutes, is amended
256 to read:

257 626.8796 Public adjuster contracts; fraud statement.—

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

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262 insurer or insured, prepares, presents, or causes to be
263 presented a proof of loss or estimate of cost or repair of
264 damaged property in support of a claim under an insurance policy
265 knowing that the proof of loss or estimate of claim or repairs
266 contains any false, incomplete, or misleading information
267 concerning any fact or thing material to the claim commits a
268 felony of the third degree, punishable as provided in s.
269 775.082, s. 775.083, or s. 775.084, Florida Statutes."

270 (2) A public adjuster contract must contain the following
271 information: full name, permanent business address, and license
272 number of the public adjuster, the full name of the public
273 adjusting firm, and the insured's full name and street address,
274 together with a brief description of the loss. The contract must
275 state the percentage of compensation for the public adjuster's
276 services, the type of claim, including an emergency claim,
277 nonemergency claim, or supplemental claim, the signatures of the
278 public adjuster and the insured, and the signature date. A copy
279 of the contract must be remitted to the insurer within 30 days
280 after execution.

281 Section 4. Section 626.70132, Florida Statutes, is created
282 to read:

283 626.70132 Duty to file windstorm or hurricane claim.—A
284 claim, supplemental claim, or reopened claim under an insurance
285 policy that provides personal lines residential coverage, as
286 defined in s. 627.4025, for loss or damage caused by the peril
287 of windstorm or hurricane is barred unless notice of the claim,
288 supplemental claim, or reopened claim was given to the insurer
289 in accordance with the terms of the policy within 3 years after
290 the hurricane first made landfall or the windstorm caused the

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291 covered damage. For purposes of this section, the term
292 "supplemental or reopened claim" means a claim for recovery of
293 additional payments from the insurer for losses from the same
294 hurricane or windstorm for which the insurer has previously paid
295 pursuant to the initial claim. This section may not be
296 interpreted to affect any applicable limitation on civil actions
297 provided in s. 95.11 for claims, supplemental claims, or
298 reopened claims timely filed under this section.

299 Section 5. This act shall take effect July 1, 2010.