

By the Committees on Judiciary; and Banking and Insurance; and
Senator Bennett

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1 A bill to be entitled
2 An act relating to property insurance claims; amending
3 s. 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 certain persons who act
13 on behalf of an insurer to provide notice to the
14 insurer, claimant, public adjuster, or legal
15 representative for an onsite inspection of the insured
16 property; authorizing the insured or claimant to deny
17 access to the property if notice is not provided;
18 requiring the public adjuster to ensure prompt notice
19 of certain property loss claims; providing that an
20 insurer be allowed to interview the insured directly
21 about the loss claim; prohibiting the insurer from
22 obstructing or preventing the public adjuster from
23 communicating with the insured; requiring that the
24 insurer communicate with the public adjuster in an
25 effort to reach agreement as to the scope of the
26 covered loss under the insurance policy; prohibiting a
27 public adjuster from restricting or preventing persons
28 acting on behalf of the insured from having reasonable
29 access to the insured or the insured's property;

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30 prohibiting a public adjuster from restricting or
31 preventing the insured's adjuster from having
32 reasonable access to or inspecting the insured's
33 property; authorizing the insured's adjuster to be
34 present for the inspection; prohibiting a licensed
35 contractor or subcontractor from adjusting a claim on
36 behalf of an insured if such contractor or
37 subcontractor is not a licensed public adjuster;
38 providing an exception; amending s. 626.8651, F.S.;
39 requiring that a public adjuster apprentice complete a
40 minimum number of hours of continuing education to
41 qualify for licensure; amending s. 626.8796, F.S.;
42 providing requirements for a public adjuster contract;
43 creating s. 626.70132, F.S.; requiring that notice of
44 a claim, supplemental claim, or reopened claim be
45 given to the insurer within a specified period after a
46 windstorm or hurricane occurs; providing a definition
47 for the term "supplemental or reopened claim";
48 providing applicability; providing an effective date.

49
50 Be It Enacted by the Legislature of the State of Florida:

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52 Section 1. Section 626.854, Florida Statutes, is amended to
53 read:

54 626.854 "Public adjuster" defined; prohibitions.—The
55 Legislature finds that it is necessary for the protection of the
56 public to regulate public insurance adjusters and to prevent the
57 unauthorized practice of law.

58 (1) A "public adjuster" is any person, except a duly

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59 licensed attorney at law as hereinafter in s. 626.860 provided,
60 who, for money, commission, or any other thing of value,
61 prepares, completes, or files an insurance claim form for an
62 insured or third-party claimant or who, for money, commission,
63 or any other thing of value, acts or aids in any manner on
64 behalf of an insured or third-party claimant in negotiating for
65 or effecting the settlement of a claim or claims for loss or
66 damage covered by an insurance contract or who advertises for
67 employment as an adjuster of such claims, and also includes any
68 person who, for money, commission, or any other thing of value,
69 solicits, investigates, or adjusts such claims on behalf of any
70 such public adjuster.

71 (2) This definition does not apply to:

72 (a) A licensed health care provider or employee thereof who
73 prepares or files a health insurance claim form on behalf of a
74 patient.

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

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

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

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

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88 days.

89 (6) A public adjuster may not directly or indirectly
90 through any other person or entity initiate contact or engage in
91 face-to-face or telephonic solicitation or enter into a contract
92 with any insured or claimant under an insurance policy until at
93 least 48 hours after the occurrence of an event that may be the
94 subject of a claim under the insurance policy unless contact is
95 initiated by the insured or claimant.

96 (7) An insured or claimant may cancel a public adjuster's
97 contract to adjust a claim without penalty or obligation within
98 3 business days after the date on which the contract is executed
99 or within 3 business days after the date on which the insured or
100 claimant has notified the insurer of the claim, by phone or in
101 writing, whichever is later. The public adjuster's contract
102 shall disclose to the insured or claimant his or her right to
103 cancel the contract and advise the insured or claimant that
104 notice of cancellation must be submitted in writing and sent by
105 certified mail, return receipt requested, or other form of
106 mailing which provides proof thereof, to the public adjuster at
107 the address specified in the contract; provided, during any
108 state of emergency as declared by the Governor and for a period
109 of 1 year after the date of loss, the insured or claimant shall
110 have 5 business days after the date on which the contract is
111 executed to cancel a public adjuster's contract.

112 (8) It is an unfair and deceptive insurance trade practice
113 pursuant to s. 626.9541 for a public adjuster or any other
114 person to circulate or disseminate any advertisement,
115 announcement, or statement containing any assertion,
116 representation, or statement with respect to the business of

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117 insurance which is untrue, deceptive, or misleading.

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

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

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

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

130 4. Any statement or representation, or use of a logo or
131 shield, that would imply or could be mistakenly construed that
132 the solicitation was issued or distributed by a governmental
133 agency or is sanctioned or endorsed by a governmental agency.

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

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

145 (9) A public adjuster, a public adjuster apprentice, or any

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146 person or entity acting on behalf of a public adjuster or public
147 adjuster apprentice may not give or offer to give a monetary
148 loan or advance to a client or prospective client.

149 (10) A public adjuster, public adjuster apprentice, or any
150 individual or entity acting on behalf of a public adjuster or
151 public adjuster apprentice may not give or offer to give,
152 directly or indirectly, any article of merchandise having a
153 value in excess of \$25 to any individual for the purpose of
154 advertising or as an inducement to entering into a contract with
155 a public adjuster.

156 (11) (a) If a public adjuster enters into a contract with an
157 insured or claimant to reopen a claim or to file a supplemental
158 claim that seeks additional payments for a claim that has been
159 previously paid in part or in full or settled by the insurer,
160 the public adjuster may not charge, agree to, or accept any
161 compensation, payment, commission, fee, or other thing of value
162 based on a previous settlement or previous claim payments by the
163 insurer for the same cause of loss. The charge, compensation,
164 payment, commission, fee, or other thing of value may be based
165 only on the claim payments or settlement obtained through the
166 work of the public adjuster after entering into the contract
167 with the insured or claimant. Compensation for a reopened or
168 supplemental claim may not exceed 20 percent of the reopened or
169 supplemental claim payment. The contracts described in this
170 paragraph are not subject to the limitations in paragraph (b).

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

174 1. Ten percent of the amount of insurance claim payments by

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175 the insurer for claims based on events that are the subject of a
176 declaration of a state of emergency by the Governor. This
177 provision applies to claims made during the period of 1 year
178 after the declaration of emergency. After the period of 1 year,
179 the limitations in subparagraph 2. apply.

180 2. Twenty percent of the amount of ~~all other~~ insurance
181 claim payments by the insurer for claims that are not based on
182 events that are the subject of a declaration of a state of
183 emergency by the Governor.

184 (12) Each public adjuster shall provide to the claimant or
185 insured a written estimate of the loss to assist in the
186 submission of a proof of loss or any other claim for payment of
187 insurance proceeds. The public adjuster shall retain such
188 written estimate for at least 5 years and shall make such
189 estimate available to the claimant or insured and the department
190 upon request.

191 (13) A public adjuster, public adjuster apprentice, or any
192 person acting on behalf of a public adjuster or apprentice may
193 not accept referrals of business from any person with whom the
194 public adjuster conducts business if there is any form or manner
195 of agreement to compensate the person, whether directly or
196 indirectly, for referring business to the public adjuster. A
197 public adjuster may not compensate any person, except for
198 another public adjuster, whether directly or indirectly, for the
199 principal purpose of referring business to the public adjuster.

200 (14) A company employee adjuster, independent adjuster,
201 attorney, investigator, or other persons acting on behalf of an
202 insurer that needs access to an insured or claimant or to the
203 insured property that is the subject of a claim shall provide at

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204 least 48 hours' notice to the insured or claimant, public
205 adjuster, or legal representative before scheduling a meeting
206 with the claimant or an onsite inspection of the insured
207 property. The insured or claimant may deny access to the
208 property if this notice has not been provided. The insured or
209 claimant may waive this 48-hour notice.

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

227 (b) A public adjuster may not restrict or prevent an
228 insurer, company employee adjuster, independent adjuster,
229 attorney, investigator, or other person acting on behalf of the
230 insurer from having reasonable access at reasonable times to any
231 insured or claimant or to the insured property that is the
232 subject of a claim.

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233 (c) A public adjuster may not act or fail to reasonably act
234 in any manner that would obstruct or prevent an insurer or
235 insurer's adjuster from timely gaining access to conduct an
236 inspection of any part of the insured property for which there
237 is a claim for loss or damage to the property. The public
238 adjuster that represents the insured may be present for the
239 insurer's inspection of the property loss or damage but, if the
240 lack of availability of the public adjuster would otherwise
241 delay the access to or the inspection of the insured property by
242 the insurer, the public adjuster or the insured must allow the
243 insurer to gain access to the insured property to facilitate the
244 insurer's prompt inspection of the loss or damage without the
245 participation or presence of the public adjuster or insured.

246 (16) A licensed contractor under part I of chapter 489, or
247 a subcontractor, may not adjust a claim on behalf of an insured
248 without being licensed and compliant as a public adjuster under
249 this chapter. However, if asked by the residential property
250 owner who has suffered loss or damage covered by a property
251 insurance policy, or the insurer of such property, a licensed
252 contractor may discuss or explain a bid for construction or
253 repair of covered property if the contractor is doing so for
254 usual and customary fees applicable to the work to be performed
255 as stated in the contract between the contractor and the
256 insured.

257
258 The provisions of subsections (5)-(16) ~~(5)-(13)~~ apply only to
259 residential property insurance policies and condominium unit
260 owner association policies as defined in s. 718.111(11).

261 Section 2. Present subsections (7) through (11) of section

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262 626.8651, Florida Statutes, are redesignated as subsections (8)
263 through (12), respectively, and a new subsection (7) is added to
264 that section, to read:

265 626.8651 Public adjuster apprentice license;
266 qualifications.-

267 (7) A public adjuster apprentice shall complete a minimum
268 of 8 hours of continuing education specific to the practice of a
269 public adjuster, 2 hours of which must relate to ethics, in
270 order to qualify for licensure as a public adjuster. The
271 continuing education must be in subjects designed to inform the
272 licensee regarding the current insurance laws of this state for
273 the purpose of enabling him or her to engage in business as an
274 insurance adjuster fairly and without injury to the public and
275 to adjust all claims in accordance with the policy or contract
276 and the laws of this state.

277 Section 3. Section 626.8796, Florida Statutes, is amended
278 to read:

279 626.8796 Public adjuster contracts; fraud statement.-

280 (1) All contracts for public adjuster services must be in
281 writing and must prominently display the following statement on
282 the contract: "Pursuant to s. 817.234, Florida Statutes, any
283 person who, with the intent to injure, defraud, or deceive any
284 insurer or insured, prepares, presents, or causes to be
285 presented a proof of loss or estimate of cost or repair of
286 damaged property in support of a claim under an insurance policy
287 knowing that the proof of loss or estimate of claim or repairs
288 contains any false, incomplete, or misleading information
289 concerning any fact or thing material to the claim commits a
290 felony of the third degree, punishable as provided in s.

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291 775.082, s. 775.083, or s. 775.084, Florida Statutes.”

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

307 Section 4. Section 626.70132, Florida Statutes, is created
308 to read:

309 626.70132 Duty to file windstorm or hurricane claim.—A
310 claim, supplemental claim, or reopened claim under an insurance
311 policy that provides personal lines residential coverage, as
312 defined in s. 627.4025, for loss or damage caused by the peril
313 of windstorm or hurricane is barred unless notice of the claim,
314 supplemental claim, or reopened claim was given to the insurer
315 in accordance with the terms of the policy within 3 years after
316 the hurricane first made landfall or the windstorm caused the
317 covered damage. For purposes of this section, the term
318 “supplemental or reopened claim” means a claim for recovery of
319 additional payments from the insurer for losses from the same

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320 hurricane or windstorm for which the insurer has previously
321 adjusted pursuant to the initial claim. This section may not be
322 interpreted to affect any applicable limitation on civil actions
323 provided in s. 95.11 for claims, supplemental claims, or
324 reopened claims timely filed under this section.

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