

20102264e1

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;

20102264e1

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 terms "supplemental claim" or "reopened
48 claim"; providing applicability; providing effective
49 dates.

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51 Be It Enacted by the Legislature of the State of Florida:

52
53 Section 1. Effective June 1, 2010, subsection (11) of
54 section 626.854, Florida Statutes, is amended to read:

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

20102264e1

59 (11) (a) If a public adjuster enters into a contract with an
60 insured or claimant to reopen a claim or to file a supplemental
61 claim that seeks additional payments for a claim that has been
62 previously paid in part or in full or settled by the insurer,
63 the public adjuster may not charge, agree to, or accept any
64 compensation, payment, commission, fee, or other thing of value
65 based on a previous settlement or previous claim payments by the
66 insurer for the same cause of loss. The charge, compensation,
67 payment, commission, fee, or other thing of value may be based
68 only on the claim payments or settlement obtained through the
69 work of the public adjuster after entering into the contract
70 with the insured or claimant. Compensation for a reopened or
71 supplemental claim may not exceed 20 percent of the reopened or
72 supplemental claim payment. The contracts described in this
73 paragraph are not subject to the limitations in paragraph (b).

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

77 1. Ten percent of the amount of insurance claim payments by
78 the insurer for claims based on events that are the subject of a
79 declaration of a state of emergency by the Governor. This
80 provision applies to claims made during the period of 1 year
81 after the declaration of emergency. After the period of 1 year,
82 the limitations in subparagraph 2. apply.

83 2. Twenty percent of the amount of ~~all other~~ insurance
84 claim payments by the insurer for claims that are not based on
85 events that are the subject of a declaration of a state of
86 emergency by the Governor.

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20102264e1

88 The provisions of subsections (5)-(13) apply only to residential
89 property insurance policies and condominium association policies
90 as defined in s. 718.111(11).

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

93 626.854 "Public adjuster" defined; prohibitions.—The
94 Legislature finds that it is necessary for the protection of the
95 public to regulate public insurance adjusters and to prevent the
96 unauthorized practice of law.

97 (1) A "public adjuster" is any person, except a duly
98 licensed attorney at law as hereinafter in s. 626.860 provided,
99 who, for money, commission, or any other thing of value,
100 prepares, completes, or files an insurance claim form for an
101 insured or third-party claimant or who, for money, commission,
102 or any other thing of value, acts or aids in any manner on
103 behalf of an insured or third-party claimant in negotiating for
104 or effecting the settlement of a claim or claims for loss or
105 damage covered by an insurance contract or who advertises for
106 employment as an adjuster of such claims, and also includes any
107 person who, for money, commission, or any other thing of value,
108 solicits, investigates, or adjusts such claims on behalf of any
109 such public adjuster.

110 (2) This definition does not apply to:

111 (a) A licensed health care provider or employee thereof who
112 prepares or files a health insurance claim form on behalf of a
113 patient.

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

116 (3) A public adjuster may not give legal advice. A public

20102264e1

117 adjuster may not act on behalf of or aid any person in
118 negotiating or settling a claim relating to bodily injury,
119 death, or noneconomic damages.

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

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

128 (6) A public adjuster may not directly or indirectly
129 through any other person or entity initiate contact or engage in
130 face-to-face or telephonic solicitation or enter into a contract
131 with any insured or claimant under an insurance policy until at
132 least 48 hours after the occurrence of an event that may be the
133 subject of a claim under the insurance policy unless contact is
134 initiated by the insured or claimant.

135 (7) An insured or claimant may cancel a public adjuster's
136 contract to adjust a claim without penalty or obligation within
137 3 business days after the date on which the contract is executed
138 or within 3 business days after the date on which the insured or
139 claimant has notified the insurer of the claim, by phone or in
140 writing, whichever is later. The public adjuster's contract
141 shall disclose to the insured or claimant his or her right to
142 cancel the contract and advise the insured or claimant that
143 notice of cancellation must be submitted in writing and sent by
144 certified mail, return receipt requested, or other form of
145 mailing which provides proof thereof, to the public adjuster at

20102264e1

146 the address specified in the contract; provided, during any
147 state of emergency as declared by the Governor and for a period
148 of 1 year after the date of loss, the insured or claimant shall
149 have 5 business days after the date on which the contract is
150 executed to cancel a public adjuster's contract.

151 (8) It is an unfair and deceptive insurance trade practice
152 pursuant to s. 626.9541 for a public adjuster or any other
153 person to circulate or disseminate any advertisement,
154 announcement, or statement containing any assertion,
155 representation, or statement with respect to the business of
156 insurance which is untrue, deceptive, or misleading.

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

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

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

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

169 4. Any statement or representation, or use of a logo or
170 shield, that would imply or could be mistakenly construed that
171 the solicitation was issued or distributed by a governmental
172 agency or is sanctioned or endorsed by a governmental agency.

173 (b) For purposes of this paragraph, the term "written
174 advertisement" includes only newspapers, magazines, flyers, and

20102264e1

175 bulk mailers. The following disclaimer, which is not required to
176 be printed on standard size business cards, shall be added in
177 bold print and capital letters in typeface no smaller than the
178 typeface of the body of the text to all written advertisements
179 by any public adjuster:

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

184 (9) A public adjuster, a public adjuster apprentice, or any
185 person or entity acting on behalf of a public adjuster or public
186 adjuster apprentice may not give or offer to give a monetary
187 loan or advance to a client or prospective client.

188 (10) A public adjuster, public adjuster apprentice, or any
189 individual or entity acting on behalf of a public adjuster or
190 public adjuster apprentice may not give or offer to give,
191 directly or indirectly, any article of merchandise having a
192 value in excess of \$25 to any individual for the purpose of
193 advertising or as an inducement to entering into a contract with
194 a public adjuster.

195 (11) (a) If a public adjuster enters into a contract with an
196 insured or claimant to reopen a claim or to file a supplemental
197 claim that seeks additional payments for a claim that has been
198 previously paid in part or in full or settled by the insurer,
199 the public adjuster may not charge, agree to, or accept any
200 compensation, payment, commission, fee, or other thing of value
201 based on a previous settlement or previous claim payments by the
202 insurer for the same cause of loss. The charge, compensation,
203 payment, commission, fee, or other thing of value may be based

20102264e1

204 only on the claim payments or settlement obtained through the
205 work of the public adjuster after entering into the contract
206 with the insured or claimant. Compensation for a reopened or
207 supplemental claim may not exceed 20 percent of the reopened or
208 supplemental claim payment. The contracts described in this
209 paragraph are not subject to the limitations in paragraph (b).

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

213 1. Ten percent of the amount of insurance claim payments by
214 the insurer for claims based on events that are the subject of a
215 declaration of a state of emergency by the Governor. This
216 provision applies to claims made during the period of 1 year
217 after the declaration of emergency. After the period of 1 year,
218 the limitations in subparagraph 2. apply.

219 2. Twenty percent of the amount of insurance claim payments
220 by the insurer for claims that are not based on events that are
221 the subject of a declaration of a state of emergency by the
222 Governor.

223 (12) Each public adjuster shall provide to the claimant or
224 insured a written estimate of the loss to assist in the
225 submission of a proof of loss or any other claim for payment of
226 insurance proceeds. The public adjuster shall retain such
227 written estimate for at least 5 years and shall make such
228 estimate available to the claimant or insured and the department
229 upon request.

230 (13) A public adjuster, public adjuster apprentice, or any
231 person acting on behalf of a public adjuster or apprentice may
232 not accept referrals of business from any person with whom the

20102264e1

233 public adjuster conducts business if there is any form or manner
234 of agreement to compensate the person, whether directly or
235 indirectly, for referring business to the public adjuster. A
236 public adjuster may not compensate any person, except for
237 another public adjuster, whether directly or indirectly, for the
238 principal purpose of referring business to the public adjuster.

239 (14) A company employee adjuster, independent adjuster,
240 attorney, investigator, or other persons acting on behalf of an
241 insurer that needs access to an insured or claimant or to the
242 insured property that is the subject of a claim shall provide at
243 least 48 hours' notice to the insured or claimant, public
244 adjuster, or legal representative before scheduling a meeting
245 with the claimant or an onsite inspection of the insured
246 property. The insured or claimant may deny access to the
247 property if this notice has not been provided. The insured or
248 claimant may waive this 48-hour notice.

249 (15) (a) A public adjuster shall ensure prompt notice of any
250 property loss claim submitted to an insurer by or through a
251 public adjuster or on which a public adjuster represents the
252 insured at the time the claim or notice of loss is submitted to
253 the insurer. The public adjuster shall ensure that notice is
254 given to the insurer, the public adjuster's contract is provided
255 to the insurer, the property is made available for inspection of
256 the loss or damage by the insurer, and the insurer is given an
257 opportunity to interview the insured directly about the loss and
258 claim. The insurer shall be allowed to obtain necessary
259 information to investigate and respond to the claim. The insurer
260 may not exclude the public adjuster from its in-person meetings
261 with the insured. The insurer shall meet or communicate with the

20102264e1

262 public adjuster in an effort to reach agreement as to the scope
263 of the covered loss under the insurance policy. This section
264 does not impair the terms and conditions of the insurance policy
265 in effect at the time the claim is filed.

266 (b) A public adjuster may not restrict or prevent an
267 insurer, company employee adjuster, independent adjuster,
268 attorney, investigator, or other person acting on behalf of the
269 insurer from having reasonable access at reasonable times to any
270 insured or claimant or to the insured property that is the
271 subject of a claim.

272 (c) A public adjuster may not act or fail to reasonably act
273 in any manner that would obstruct or prevent an insurer or
274 insurer's adjuster from timely gaining access to conduct an
275 inspection of any part of the insured property for which there
276 is a claim for loss or damage to the property. The public
277 adjuster that represents the insured may be present for the
278 insurer's inspection of the property loss or damage but, if the
279 lack of availability of the public adjuster would otherwise
280 delay the access to or the inspection of the insured property by
281 the insurer, the public adjuster or the insured must allow the
282 insurer to gain access to the insured property to facilitate the
283 insurer's prompt inspection of the loss or damage without the
284 participation or presence of the public adjuster or insured.

285 (16) A licensed contractor under part I of chapter 489, or
286 a subcontractor, may not adjust a claim on behalf of an insured
287 without being licensed and compliant as a public adjuster under
288 this chapter. However, if asked by the residential property
289 owner who has suffered loss or damage covered by a property
290 insurance policy, or the insurer of such property, a licensed

20102264e1

291 contractor may discuss or explain a bid for construction or
292 repair of covered property if the contractor is doing so for
293 usual and customary fees applicable to the work to be performed
294 as stated in the contract between the contractor and the
295 insured.

296
297 The provisions of subsections (5)-(16) ~~(5)-(13)~~ apply only to
298 residential property insurance policies and condominium unit
299 owner association policies as defined in s. 718.111(11).

300 Section 3. Present subsections (7) through (11) of section
301 626.8651, Florida Statutes, are redesignated as subsections (8)
302 through (12), respectively, and a new subsection (7) is added to
303 that section, to read:

304 626.8651 Public adjuster apprentice license;
305 qualifications.—

306 (7) A public adjuster apprentice shall complete a minimum
307 of 8 hours of continuing education specific to the practice of a
308 public adjuster, 2 hours of which must relate to ethics, in
309 order to qualify for licensure as a public adjuster. The
310 continuing education must be in subjects designed to inform the
311 licensee regarding the current insurance laws of this state for
312 the purpose of enabling him or her to engage in business as an
313 insurance adjuster fairly and without injury to the public and
314 to adjust all claims in accordance with the insurance contract
315 and the laws of this state.

316 Section 4. Section 626.8796, Florida Statutes, is amended
317 to read:

318 626.8796 Public adjuster contracts; fraud statement.—

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

20102264e1

320 writing and must prominently display the following statement on
321 the contract: "Pursuant to s. 817.234, Florida Statutes, any
322 person who, with the intent to injure, defraud, or deceive any
323 insurer or insured, prepares, presents, or causes to be
324 presented a proof of loss or estimate of cost or repair of
325 damaged property in support of a claim under an insurance policy
326 knowing that the proof of loss or estimate of claim or repairs
327 contains any false, incomplete, or misleading information
328 concerning any fact or thing material to the claim commits a
329 felony of the third degree, punishable as provided in s.
330 775.082, s. 775.083, or s. 775.084, Florida Statutes."

331 (2) A public adjuster contract must contain the following
332 information: full name, permanent business address, and license
333 number of the public adjuster, the full name of the public
334 adjusting firm, and the insured's full name and street address,
335 together with a brief description of the loss. The contract must
336 state the percentage of compensation for the public adjuster's
337 services, the type of claim, including an emergency claim,
338 nonemergency claim, or supplemental claim, the signatures of the
339 public adjuster and all named insureds, and the signature date.
340 If all named insureds signatures are not available, the public
341 adjuster shall submit an affidavit signed by the available named
342 insureds attesting that they have authority to enter into the
343 contract and to settle all claim issues on behalf of all named
344 insureds. An unaltered copy of the executed contract must be
345 remitted to the insurer within 30 days after execution.

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

348 626.70132 Duty to file windstorm or hurricane claim.-A

20102264e1

349 claim, supplemental claim, or reopened claim under an insurance
350 policy that provides personal lines residential coverage, as
351 defined in s. 627.4025, for loss or damage caused by the peril
352 of windstorm or hurricane is barred unless notice of the claim,
353 supplemental claim, or reopened claim was given to the insurer
354 in accordance with the terms of the policy within 3 years after
355 the hurricane first made landfall or the windstorm caused the
356 covered damage. For purposes of this section, the term
357 "supplemental claim" or "reopened claim" means any additional
358 claim for recovery from the insurer for losses from the same
359 hurricane or windstorm for which the insurer has previously
360 adjusted pursuant to the initial claim. This section may not be
361 interpreted to affect any applicable limitation on civil actions
362 provided in s. 95.11 for claims, supplemental claims, or
363 reopened claims timely filed under this section.

364 Section 6. Except as otherwise expressly provided in this
365 act and except for this section, which shall take effect June 1,
366 2010, this act shall take effect January 1, 2011.