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LEGISLATIVE ACTION

Senate

House

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Floor: 12/AD/2R

04/23/2010 02:00 PM

Senator Bennett moved the following:

Senate Amendment (with title amendment)

Between lines 569 and 570

insert:

Section 6. 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 7. Effective January 1, 2011, section 626.854,
44 Florida Statutes, as amended by 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 8. Effective January 1, 2011, present subsections
253 (7) through (11) of section 626.8651, Florida Statutes, are
254 redesignated as subsections (8) through (12), respectively, and
255 a new subsection (7) is added to 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 9. Effective January 1, 2011, section 626.8796,
269 Florida Statutes, is amended 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 10. 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



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
317 ===== T I T L E A M E N D M E N T =====

318 And the title is amended as follows:

319 Delete line 28

320 and insert:

321 managing general agents; amending s. 626.854, F.S.;

322 providing statements that may be considered deceptive

323 or misleading if made in any public adjuster's

324 advertisement or solicitation; providing a definition

325 for the term "written advertisement"; requiring that a

326 disclaimer be included in any public adjuster's

327 written advertisement; providing requirements for such

328 disclaimer; providing limitations on the amount of

329 compensation that may be received for a reopened or

330 supplemental claim; requiring certain persons who act

331 on behalf of an insurer to provide notice to the

332 insurer, claimant, public adjuster, or legal



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333 representative for an onsite inspection of the insured
334 property; authorizing the insured or claimant to deny
335 access to the property if notice is not provided;
336 requiring the public adjuster to ensure prompt notice
337 of certain property loss claims; providing that an
338 insurer be allowed to interview the insured directly
339 about the loss claim; prohibiting the insurer from
340 obstructing or preventing the public adjuster from
341 communicating with the insured; requiring that the
342 insurer communicate with the public adjuster in an
343 effort to reach agreement as to the scope of the
344 covered loss under the insurance policy; prohibiting a
345 public adjuster from restricting or preventing persons
346 acting on behalf of the insured from having reasonable
347 access to the insured or the insured's property;
348 prohibiting a public adjuster from restricting or
349 preventing the insured's adjuster from having
350 reasonable access to or inspecting the insured's
351 property; authorizing the insured's adjuster to be
352 present for the inspection; prohibiting a licensed
353 contractor or subcontractor from adjusting a claim on
354 behalf of an insured if such contractor or
355 subcontractor is not a licensed public adjuster;
356 providing an exception; amending s. 626.8651, F.S.;
357 requiring that a public adjuster apprentice complete a
358 minimum number of hours of continuing education to
359 qualify for licensure; amending s. 626.8796, F.S.;
360 providing requirements for a public adjuster contract;
361 creating s. 626.70132, F.S.; requiring that notice of



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362 a claim, supplemental claim, or reopened claim be
363 given to the insurer within a specified period after a
364 windstorm or hurricane occurs; providing a definition
365 for the terms "supplemental claim" or "reopened
366 claim"; providing applicability; amending s. 626.9744,
367 F.S.;