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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2010	.	
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The Committee on Banking and Insurance (Bennett) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. 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.

(1) A "public adjuster" is any person, except a duly licensed attorney at law as hereinafter in s. 626.860 provided,



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13 who, for money, commission, or any other thing of value,
14 prepares, completes, or files an insurance claim form for an
15 insured or third-party claimant or who, for money, commission,
16 or any other thing of value, acts or aids in any manner on
17 behalf of an insured or third-party claimant in negotiating for
18 or effecting the settlement of a claim or claims for loss or
19 damage covered by an insurance contract or who advertises for
20 employment as an adjuster of such claims, and also includes any
21 person who, for money, commission, or any other thing of value,
22 solicits, investigates, or adjusts such claims on behalf of any
23 such public adjuster.

24 (2) This definition does not apply to:

25 (a) A licensed health care provider or employee thereof who
26 prepares or files a health insurance claim form on behalf of a
27 patient.

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

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

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

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



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

49 (7) An insured or claimant may cancel a public adjuster's
50 contract to adjust a claim without penalty or obligation within
51 3 business days after the date on which the contract is executed
52 or within 3 business days after the date on which the insured or
53 claimant has notified the insurer of the claim, by phone or in
54 writing, whichever is later. The public adjuster's contract
55 shall disclose to the insured or claimant his or her right to
56 cancel the contract and advise the insured or claimant that
57 notice of cancellation must be submitted in writing and sent by
58 certified mail, return receipt requested, or other form of
59 mailing which provides proof thereof, to the public adjuster at
60 the address specified in the contract; provided, during any
61 state of emergency as declared by the Governor and for a period
62 of 1 year after the date of loss, the insured or claimant shall
63 have 5 business days after the date on which the contract is
64 executed to cancel a public adjuster's contract.

65 (8) It is an unfair and deceptive insurance trade practice
66 pursuant to s. 626.9541 for a public adjuster or any other
67 person to circulate or disseminate any advertisement,
68 announcement, or statement containing any assertion,
69 representation, or statement with respect to the business of
70 insurance which is untrue, deceptive, or misleading.



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

74 1. A statement or representation that invites an insured
75 policyholder to submit a claim when the policyholder may not
76 have covered damage to insured property, or the claim has
77 previously been fully adjusted and paid, by offering monetary or
78 other valuable inducement, or by stating that there is "no risk"
79 to the policyholder by submitting such claim.

80 2. Any statement or representation, or use of a logo or
81 shield, that would imply or could be mistakenly construed that
82 the solicitation was issued or distributed by a governmental
83 agency or is sanctioned or endorsed by a governmental agency.

84 (b) For purposes of this paragraph, the term "written
85 advertisement" includes only newspapers, magazines, flyers,
86 brochures, and mailers. The following disclaimer, which is not
87 required to be printed on standard size business cards, shall be
88 added in bold print and capital letters in typeface no smaller
89 than the typeface of the body of the text to all written
90 advertisements by any public adjuster:

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

95 (9) A public adjuster, a public adjuster apprentice, or any
96 person or entity acting on behalf of a public adjuster or public
97 adjuster apprentice may not give or offer to give a monetary
98 loan or advance to a client or prospective client.

99 (10) A public adjuster, public adjuster apprentice, or any



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100 individual or entity acting on behalf of a public adjuster or
101 public adjuster apprentice may not give or offer to give,
102 directly or indirectly, any article of merchandise having a
103 value in excess of \$25 to any individual for the purpose of
104 advertising or as an inducement to entering into a contract with
105 a public adjuster.

106 (11) (a) If a public adjuster enters into a contract with an
107 insured or claimant to reopen a claim or to file a supplemental
108 claim that seeks additional payments for a claim that has been
109 previously paid in part or in full or settled by the insurer,
110 the public adjuster may not charge, agree to, or accept any
111 compensation, payment, commission, fee, or other thing of value
112 based on a previous settlement or previous claim payments by the
113 insurer for the same cause of loss. The charge, compensation,
114 payment, commission, fee, or other thing of value may be based
115 only on the claim payments or settlement obtained through the
116 work of the public adjuster after entering into the contract
117 with the insured or claimant. Compensation for a reopened or
118 supplemental claim may not exceed 30 percent of the reopened or
119 supplemental claim payment and may not exceed the caps provided
120 in paragraph (b) for the overall claim, inclusive of the
121 supplemental claim payment. ~~The contracts described in this~~
122 ~~paragraph are not subject to the limitations in paragraph (b).~~

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

126 1. Ten percent of the amount of insurance claim payments by
127 the insurer for claims based on events that are the subject of a
128 declaration of a state of emergency by the Governor. This



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129 provision applies to claims made during the period of 1 year
130 after the declaration of emergency.

131 2. Twenty percent of the amount of ~~all other~~ insurance
132 claim payments by the insurer for claims that are not based on
133 events that are the subject of a declaration of a state of
134 emergency by the Governor.

135 (12) Each public adjuster shall provide to the claimant or
136 insured a written estimate of the loss to assist in the
137 submission of a proof of loss or any other claim for payment of
138 insurance proceeds. The public adjuster shall retain such
139 written estimate for at least 5 years and shall make such
140 estimate available to the claimant or insured and the department
141 upon request.

142 (13) A public adjuster, public adjuster apprentice, or any
143 person acting on behalf of a public adjuster or apprentice may
144 not accept referrals of business from any person with whom the
145 public adjuster conducts business if there is any form or manner
146 of agreement to compensate the person, whether directly or
147 indirectly, for referring business to the public adjuster. A
148 public adjuster may not compensate any person, except for
149 another public adjuster, whether directly or indirectly, for the
150 principal purpose of referring business to the public adjuster.

151 (14) (a) A public adjuster shall make all reasonable and
152 necessary efforts to ensure prompt notice of any property loss
153 claim submitted to an insurer by or through a public adjuster or
154 on which a public adjuster represents the insured at the time
155 the claim or notice of loss is submitted to the insurer. The
156 public adjuster shall ensure that notice is given to the
157 insurer, the public adjuster's contract is timely provided to



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158 the insurer, the property is timely made available for
159 inspection of the loss or damage by the insurer, and the insurer
160 is given a reasonable and timely opportunity to interview the
161 insured directly about the loss and claim. The insurer shall be
162 allowed a reasonable opportunity to obtain necessary information
163 to fully evaluate and respond to the claim. If the insurer
164 receives prompt notice of the claim, is given timely access to
165 insured property to inspect the loss or damage and interview the
166 insured, and determines that coverage exists for the claimed
167 loss, the insurer shall timely meet or communicate with the
168 public adjuster in an effort to reach agreement as to the scope
169 of the covered loss under the insurance policy.

170 (b) A public adjuster may not obstruct or prevent an
171 insurer, company employee adjuster, independent adjuster,
172 investigator, or other person acting on behalf of the insurer
173 from communicating directly with an insured during its
174 inspection of a loss to an insured property, obstruct an
175 insurer's efforts to gather information to evaluate or respond
176 to a pending claim, obstruct or prevent an insurer or insurer's
177 adjuster from timely gaining access to conduct an inspection of
178 any part of the insured property, or act in any manner to
179 prevent direct communication by the insurer or its adjuster with
180 an insured. The public adjuster representing the insured may be
181 present for the insurer's inspection of the property loss or
182 damage; however, if the lack of availability of the public
183 adjuster would otherwise delay the access to or inspection of
184 the insured property by the insurer, the insurer may gain access
185 to the property and meet with the insured without the public
186 adjuster.



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187 (15) A licensed contractor under part I of chapter 489, or
188 subcontractor, may not adjust a claim on behalf of an insured
189 without being licensed as a public adjuster under this chapter.
190 However, this subsection does not apply to a licensed contractor
191 or subcontractor that is preparing or has submitted a bid to a
192 residential property owner who has suffered loss or damage
193 covered by a property insurance policy, if such contractor is
194 asked by the homeowner or the insurer to discuss or explain a
195 bid for construction or repair of covered property, and is doing
196 so for usual and customary fees applicable to the work to be
197 performed by the contractor or subcontractor. A subcontractor
198 may discuss a bid encompassing only the specific specialty for
199 which the subcontractor has submitted a bid and for which the
200 subcontractor is qualified. A subcontractor may not represent a
201 homeowner regarding an overall covered claim to construct or
202 repair covered property.

203
204 The provisions of subsections (5)-(15) ~~(5)-(13)~~ apply only to
205 residential property insurance policies and condominium
206 association policies as defined in s. 718.111(11).

207 Section 2. Present subsections (7) through (11) of section
208 626.8651, Florida Statutes, are redesignated as subsections (8)
209 through (12), respectively, and a new subsection (7) is added to
210 that section, to read:

211 626.8651 Public adjuster apprentice license;
212 qualifications.—

213 (7) A public adjuster apprentice shall complete a minimum
214 of 8 hours of continuing education specific to the practice of a
215 public adjuster, 2 hours of which must relate to ethics, in



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216 order to qualify for licensure as a public adjuster. The
217 continuing education must be in subjects designed to inform the
218 licensee regarding the current insurance laws of this state for
219 the purpose of enabling him or her to engage in business as an
220 insurance adjuster fairly and without injury to the public and
221 to adjust all claims in accordance with the policy or contract
222 and the laws of this state.

223 Section 3. Section 626.8796, Florida Statutes, is amended
224 to read:

225 626.8796 Public adjuster contracts; fraud statement.-

226 (1) All contracts for public adjuster services must be in
227 writing and must prominently display the following statement on
228 the contract: "Pursuant to s. 817.234, Florida Statutes, any
229 person who, with the intent to injure, defraud, or deceive any
230 insurer or insured, prepares, presents, or causes to be
231 presented a proof of loss or estimate of cost or repair of
232 damaged property in support of a claim under an insurance policy
233 knowing that the proof of loss or estimate of claim or repairs
234 contains any false, incomplete, or misleading information
235 concerning any fact or thing material to the claim commits a
236 felony of the third degree, punishable as provided in s.
237 775.082, s. 775.083, or s. 775.084, Florida Statutes."

238 (2) A public adjuster contract must contain the following
239 information: full name, permanent business address, and license
240 number of the public adjuster, the full name of the public
241 adjusting firm, and the insured's full name and street address,
242 together with a brief description of the loss. The contract must
243 state the percentage of compensation for the public adjuster's
244 services, the type of claim, including an emergency claim,



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245 nonemergency claim, or supplemental claim, the signatures of the
246 public adjuster and the insured, and the signature date. A copy
247 of the contract must be remitted to the insurer within 30 days
248 after execution.

249 Section 4. Section 626.70132, Florida Statutes, is created
250 to read:

251 626.70132 Duty to file windstorm or hurricane claim.—A
252 claim, supplemental claim, or reopened claim under an insurance
253 policy that provides personal lines residential coverage, as
254 defined in s. 627.4025, for loss or damage caused by the peril
255 of windstorm or hurricane is barred unless notice of the claim,
256 supplemental claim, or reopened claim was given to the insurer
257 in accordance with the terms of the policy within 3 years after
258 the hurricane first made landfall or the windstorm caused the
259 covered damage. For purposes of this section, the term
260 “supplemental or reopened claim” means a claim for recovery of
261 additional payments from the insurer for losses from the same
262 hurricane or windstorm for which the insurer has previously paid
263 pursuant to the initial claim. This section may not be
264 interpreted to affect any applicable limitation on civil actions
265 provided in s. 95.11 for claims, supplemental claims, or
266 reopened claims timely filed under this section.

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

268
269 ===== T I T L E A M E N D M E N T =====

270 And the title is amended as follows:

271 Delete everything before the enacting clause
272 and insert:

273 A bill to be entitled



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274 An act relating to public adjusters; amending s.
275 626.854, F.S.; providing statements that may be
276 considered deceptive or misleading if made in any
277 public adjuster's advertisement or solicitation;
278 providing a definition for the term "written
279 advertisement"; requiring that a disclaimer be
280 included in any public adjuster's written
281 advertisement; providing requirements for such
282 disclaimer; providing limitations on the amount of
283 compensation that may be received for a reopened or
284 supplemental claim; requiring that a public adjuster
285 make a reasonable and necessary effort to ensure
286 prompt notice of certain property loss claims;
287 providing that an insurer be allowed a reasonable
288 opportunity to obtain information and respond to the
289 claim; prohibiting a public adjuster from obstructing
290 or preventing certain persons from communicating with
291 the insured; prohibiting a licensed contractor or
292 subcontractor from adjusting a claim on behalf of an
293 insured if such contractor or subcontractor is not a
294 licensed public adjuster; providing an exception;
295 amending s. 626.8651, F.S.; requiring that a public
296 adjuster apprentice complete a minimum number of hours
297 of continuing education to qualify for licensure;
298 amending s. 626.8796, F.S.; providing requirements for
299 a public adjuster contract; creating s. 626.70132,
300 F.S.; requiring that notice of a claim, supplemental
301 claim, or reopened claim be given to the insurer
302 within a specified period after a windstorm or



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303 hurricane occurs; providing a definition for the term
304 "supplemental or reopened claim"; providing
305 applicability; providing an effective date.