

BILL PCS HB 1181

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1 A bill to be entitled
2 An act relating to public adjusters; amending s. 626.854,
3 F.S.; providing statements that may be considered
4 deceptive or misleading if made in any public adjuster's
5 advertisement or solicitation; providing a definition for
6 the term "written advertisement"; requiring that a
7 disclaimer be included in any public adjuster's written
8 advertisement; providing requirements for such disclaimer;
9 providing limitations on the amount of compensation that
10 may be received for a reopened or supplemental claim;
11 requiring that a public adjuster make a reasonable and
12 necessary effort to ensure prompt notice of certain
13 property loss claims; providing that an insurer be allowed
14 a reasonable opportunity to obtain information and respond
15 to the claim; prohibiting a public adjuster from
16 obstructing or preventing certain persons from
17 communicating with the insured; prohibiting a licensed
18 contractor or subcontractor from adjusting a claim on
19 behalf of an insured if such contractor or subcontractor
20 is not a licensed public adjuster; providing an exception;
21 amending s. 626.8651, F.S.; requiring that a public
22 adjuster apprentice complete a minimum number of hours of
23 continuing education to qualify for licensure; amending s.
24 626.8796, F.S.; providing requirements for a public
25 adjuster contract; creating s. 626.70132, F.S.; requiring
26 that notice of a claim, supplemental claim, or reopened
27 claim be given to the insurer within a specified period
28 after a windstorm or hurricane occurs; providing a

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29 | definition for the term "supplemental or reopened claim";
 30 | providing applicability; providing an effective date.

31 |

32 | Be It Enacted by the Legislature of the State of Florida:

33 |

34 | Section 1. Effective June 1, 2010, subsection (11) is
 35 | amended and effective January 1, 2011, subsection (8) is
 36 | amended, and effective January 1, 2011, subsections (14), (15),
 37 | and (16) are added to Section 626.854, Florida Statutes, 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

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58 prepares or files a health insurance claim form on behalf of a
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.

109 2. A statement or representation that invites an insured
 110 policyholder to submit a claim when the claim has previously
 111 been fully adjusted and paid.

112 3. A statement or representation that invites an insured
 113 policyholder to submit a claim by offering monetary or other
 114 valuable inducement.

115 4. A statement or representation that invites an insured
 116 policyholder to submit a claim when stating that there is "no
 117 risk" to the policyholder by submitting such claim.

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118 5. Any statement or representation, or use of a logo or
119 shield, that would imply or could be mistakenly construed that
120 the solicitation was issued or distributed by a governmental
121 agency or is sanctioned or endorsed by a governmental agency.

122 (b) For purposes of this paragraph, the term "written
123 advertisement" includes only newspapers, magazines, flyers, and
124 bulk mailers. The following disclaimer, which is not required to
125 be printed on standard size business cards, shall be added in
126 bold print and capital letters in typeface no smaller than the
127 typeface of the body of the text to all written advertisements
128 by any public adjuster:

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

133 (9) A public adjuster, a public adjuster apprentice, or any
134 person or entity acting on behalf of a public adjuster or public
135 adjuster apprentice may not give or offer to give a monetary
136 loan or advance to a client or prospective client.

137 (10) A public adjuster, public adjuster apprentice, or any
138 individual or entity acting on behalf of a public adjuster or
139 public adjuster apprentice may not give or offer to give,
140 directly or indirectly, any article of merchandise having a
141 value in excess of \$25 to any individual for the purpose of
142 advertising or as an inducement to entering into a contract with
143 a public adjuster.

144 (11) (a) If a public adjuster enters into a contract with an
145 insured or claimant to reopen a claim or to file a supplemental
146 claim that seeks additional payments for a claim that has been
147 previously paid in part or in full or settled by the insurer,

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148 the public adjuster may not charge, agree to, or accept any
 149 compensation, payment, commission, fee, or other thing of value
 150 based on a previous settlement or previous claim payments by the
 151 insurer for the same cause of loss. The charge, compensation,
 152 payment, commission, fee, or other thing of value may be based
 153 only on the claim payments or settlement obtained through the
 154 work of the public adjuster after entering into the contract
 155 with the insured or claimant. Compensation for a reopened or
 156 supplemental claim may not exceed 30 percent of the reopened or
 157 supplemental claim payment and may not exceed the caps provided
 158 in paragraph (b) for the overall claim, inclusive of the
 159 supplemental claim payment. ~~The contracts described in this~~
 160 ~~paragraph are not subject to the limitations in paragraph (b).~~

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

164 1. Ten percent of the amount of insurance claim payments by
 165 the insurer for claims based on events that are the subject of a
 166 declaration of a state of emergency by the Governor. ~~This~~
 167 ~~provision applies to claims made during the period of 1 year~~
 168 ~~after the declaration of emergency.~~

169 2. Twenty percent of the amount of ~~all other~~ insurance
 170 claim payments by the insurer for claims that are not based on
 171 events that are the subject of a declaration of a state of
 172 emergency by the Governor.

173 (12) Each public adjuster shall provide to the claimant or
 174 insured a written estimate of the loss to assist in the
 175 submission of a proof of loss or any other claim for payment of
 176 insurance proceeds. The public adjuster shall retain such
 177 written estimate for at least 5 years and shall make such

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178 estimate available to the claimant or insured and the department
 179 upon request.

180 (13) A public adjuster, public adjuster apprentice, or any
 181 person acting on behalf of a public adjuster or apprentice may
 182 not accept referrals of business from any person with whom the
 183 public adjuster conducts business if there is any form or manner
 184 of agreement to compensate the person, whether directly or
 185 indirectly, for referring business to the public adjuster. A
 186 public adjuster may not compensate any person, except for
 187 another public adjuster, whether directly or indirectly, for the
 188 principal purpose of referring business to the public adjuster.

189 (14) A company employee adjuster, independent adjuster,
 190 attorney, investigator, or other persons acting on behalf of an
 191 insurer that needs access to an insured or claimant or to the
 192 insured property that is the subject of a claim shall provide at
 193 least 48 hours notice to the insured, or claimant, public
 194 adjuster or legal representative prior to scheduling a meeting
 195 with the claimant or an on-site inspection of the insured
 196 property. The insured or claimant may deny access to the
 197 property if this notice has not been provided. The insured or
 198 claimant may waive this 48 hour notice.

199 (15) (a) A public adjuster shall make all reasonable and
 200 necessary efforts to ensure prompt notice of any property loss
 201 claim submitted to an insurer by or through a public adjuster or
 202 on which a public adjuster represents the insured at the time
 203 the claim or notice of loss is submitted to the insurer. The
 204 public adjuster shall ensure that notice is given to the
 205 insurer, the public adjuster's contract is timely provided to
 206 the insurer, the property is timely made available for

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207 inspection of the loss or damage by the insurer, and the insurer
 208 is given a reasonable and timely opportunity to interview the
 209 insured directly about the loss and claim. The insurer shall be
 210 allowed a reasonable opportunity to obtain necessary information
 211 to investigate and respond to the claim. The insurer shall meet
 212 or communicate with the public adjuster in an effort to reach
 213 agreement as to the scope of the covered loss under the
 214 insurance policy. Nothing contained in this section will impair
 215 the terms and conditions of the insurance policy in effect at
 216 the time the claim is filed.

217 (b) A public adjuster shall not restrict or prevent an
 218 insurer, company employee adjuster, independent adjuster,
 219 attorney, investigator, or other person acting on behalf of the
 220 insurer from having reasonable access at reasonable times to an
 221 insured or claimant or to the insured property that is the
 222 subject of a claim.

223 (c) A public adjuster shall not act or fail to reasonably
 224 act in any manner that would obstruct or prevent an insurer or
 225 insurer's adjuster from timely gaining access to conduct an
 226 inspection of any part of the insured property for which there
 227 is a claim for loss or damage to the property. The public
 228 adjuster that represents the insured may be present for the
 229 insurer's inspection of the property loss or damage but, if the
 230 lack of availability of the public adjuster would otherwise
 231 delay the access to or the inspection of the insured property by
 232 the insurer, the public adjuster or the insured must provide
 233 alternative means for the insurer to gain access to the insured
 234 property to allow the insurer's prompt inspection of the loss or

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235 damage without the participation or presence of the public
 236 adjuster or insured.

237 (16) A licensed contractor under part I of chapter 489, or
 238 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, this subsection does not apply to a
 241 licensed contractor that is preparing or has submitted a bid to
 242 a residential property owner who has suffered loss or damage
 243 covered by a property insurance policy, if such contractor is
 244 asked by the homeowner or the insurer to discuss or explain a
 245 bid for construction or repair of covered property, and is doing
 246 so for usual and customary fees applicable to the work to be
 247 performed by the contractor as stated in the contract between
 248 the contractor and the insured

249 The provisions of subsections (5)-(16) ~~(5)-(13)~~ apply only to
 250 residential property insurance policies and condominium
 251 association policies as defined in s. 718.111(11).
 252

253 Section 2. Present subsections (7) through (11) of section
 254 626.8651, Florida Statutes, are redesignated as subsections (8)
 255 through (12), respectively, and a new subsection (7) is added to
 256 that section, to read:

257 626.8651 Public adjuster apprentice license;
 258 qualifications.—

259 (7) A public adjuster apprentice shall complete a minimum
 260 of 8 hours of continuing education specific to the practice of a
 261 public adjuster, 2 hours of which must relate to ethics, in
 262 order to qualify for licensure as a public adjuster. The
 263 continuing education must be in subjects designed to inform the

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264 licensee regarding the current insurance laws of this state for
 265 the purpose of enabling him or her to engage in business as an
 266 insurance adjuster fairly and without injury to the public and
 267 to adjust all claims in accordance with the insurance contract
 268 and the laws of this state.

269 ~~(7)~~ (8) An appointing public adjusting firm may not
 270 maintain more than 12 public adjuster apprentices
 271 simultaneously. However, a supervising public adjuster may not
 272 be responsible for more than three public adjuster apprentices
 273 simultaneously and shall be accountable for the acts of all
 274 public adjuster apprentices which are related to transacting
 275 business as a public adjuster apprentice.

276 ~~(8)~~ (9) An apprentice license is effective for 18 months
 277 unless the license expires due to lack of maintaining an
 278 appointment; is surrendered by the licensee; is terminated,
 279 suspended, or revoked by the department; or is canceled by the
 280 department upon issuance of a public adjuster license. The
 281 department may not issue a public adjuster apprentice license to
 282 any individual who has held such a license in this state within
 283 2 years after expiration, surrender, termination, revocation, or
 284 cancellation of the license.

285 ~~(9)~~ (10)After completing the requirements for employment
 286 as a public adjuster apprentice, the licensee may file an
 287 application for a public adjuster license. The applicant and
 288 supervising public adjuster or public adjusting firm must each
 289 file a sworn affidavit, on a form prescribed by the department,
 290 verifying that the employment of the public adjuster apprentice
 291 meets the requirements of this section.

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292 ~~(10)~~ (11) In no event shall a public adjuster apprentice
 293 licensed under this section perform any of the functions for
 294 which a public adjuster's license is required after expiration
 295 of the public adjuster apprentice license without having
 296 obtained a public adjuster license.

297 ~~(11)~~ (12) A public adjuster apprentice has the same
 298 authority as the licensed public adjuster or public adjusting
 299 firm that employs the apprentice except that an apprentice may
 300 not execute contracts for the services of a public adjuster or
 301 public adjusting firm and may not solicit contracts for the
 302 services except under the direct supervision and guidance of the
 303 supervisory public adjuster. An individual may not be, act as,
 304 or hold himself or herself out to be a public adjuster
 305 apprentice unless the individual is licensed and holds a current
 306 appointment by a licensed public all-lines adjuster or a public
 307 adjusting firm that employs a licensed all-lines public
 308 adjuster.

309
 310 Section 3. Section 626.8796, Florida Statutes, is amended
 311 to read:

312 626.8796 Public adjuster contracts; fraud statement.—

313 (1) All contracts for public adjuster services must be in
 314 writing and must prominently display the following statement on
 315 the contract: "Pursuant to s. 817.234, Florida Statutes, any
 316 person who, with the intent to injure, defraud, or deceive any
 317 insurer or insured, prepares, presents, or causes to be
 318 presented a proof of loss or estimate of cost or repair of
 319 damaged property in support of a claim under an insurance policy

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320 knowing that the proof of loss or estimate of claim or repairs
 321 contains any false, incomplete, or misleading information
 322 concerning any fact or thing material to the claim commits a
 323 felony of the third degree, punishable as provided in s.
 324 775.082, s. 775.083, or s. 775.084, Florida Statutes.”

325 (2) A public adjuster contract must contain the following
 326 information: full name, permanent business address, and license
 327 number of the public adjuster, the full name of the public
 328 adjusting firm, and the insured’s full name and street address,
 329 together with a brief description of the loss. The contract must
 330 state the percentage of compensation for the public adjuster’s
 331 services, the type of claim, including an emergency claim,
 332 nonemergency claim, or supplemental claim, the signatures of the
 333 public adjuster and the insured, and the signature date. An
 334 unaltered copy of the executed contract must be remitted to the
 335 insurer within 30 days after execution.

336
 337 Section 4. Effective June 1, 2010, Section 626.70132,
 338 Florida Statutes, is created to read:

339 626.70132 Duty to file windstorm or hurricane claim.—A
 340 claim, supplemental claim, or reopened claim under an insurance
 341 policy that provides personal lines residential coverage, as
 342 defined in s. 627.4025, for loss or damage caused by the peril
 343 of windstorm or hurricane is barred unless notice of the claim,
 344 supplemental claim, or reopened claim was given to the insurer
 345 in accordance with the terms of the policy within 3 years after
 346 the hurricane first made landfall or the windstorm caused the
 347 covered damage. For purposes of this section, the term
 348 “supplemental or reopened claim” means a claim for recovery of
 349 additional payments from the insurer for losses from the same

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350 hurricane or windstorm for which the insurer has previously paid
 351 pursuant to the initial claim. This section may not be
 352 interpreted to affect any applicable limitation on civil actions
 353 provided in s. 95.11 for claims, supplemental claims, or
 354 reopened claims timely filed under this section.
 355

356 Section 5. Except as otherwise provided in this act, this
 357 act shall take effect January 1, 2011.