

ASSEMBLY BILL

No. 2404

Introduced by Assembly Member Hill

February 19, 2010

An act to amend Sections 481, 730, and 12938 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2404, as introduced, Hill. Insurance.

(1) Existing law requires that unless the insurance contract provides otherwise, an insured person is entitled to a return of his or her premium if the policy is canceled, rejected, surrendered, or rescinded, as provided.

This bill would require that any insurance policy that includes a provision to refund a premium other than on a pro rata basis, including the assessment of cancellation fees, separately disclose that fact in writing, including a description of the cancellation process and the actual fees or penalties applied. The disclosure would be required to be made prior to, or concurrent with, the application and prior to each renewal, as provided. If an application is made by telephone, the disclosure would be required to be mailed to the applicant or insured within 3 business days.

(2) Existing law requires the Insurance Commissioner to conduct an examination of the business and affairs of insurers admitted in this state at least once every 5 years. In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner is required to consider the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, market analysis results, including consumer complaint analysis, evaluation of ongoing regulatory activities, analysis

of data derived from industry surveys or interrogatories, and other criteria as set forth in the Examiner's Handbook or in the Market Regulation Handbook adopted by the National Association of Insurance Commissioners (NAIC) that are in effect at the time of the examination.

This bill would authorize the commissioner to forgo a market conduct examination, otherwise required, for up to an additional 5 years if information derived from a market analysis process that considers criteria, such as prior examination results, consumer complaint data, market share, actions taken by other states, and information from other sources, does not indicate that an examination is warranted.

(3) Existing law requires the Department of Insurance to make available for public inspection and publish on its Internet Web site, every adopted report of an examination of unfair or deceptive practices in the business of insurance, as defined, that is adopted as filed, or as modified or corrected, by the commissioner, as specified.

This bill would instead require the department to make available for public inspection and publish on its Internet Web site, every adopted market conduct report of an examination of an insurer's claims handling practices, that is adopted as filed, or as modified or corrected, by the commissioner, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 481 of the Insurance Code is amended
2 to read:
3 481. (a) Unless the insurance contract otherwise provides, a
4 person insured is entitled to a return of *his or her* premium if the
5 policy is canceled, rejected, surrendered, or rescinded, as follows:
6 (1) To the whole premium, if the insurer has not been exposed
7 to any risk of loss.
8 (2) Where the insurance is made for a definite period of time
9 and the insured surrenders his policy, to such proportion of the
10 premium as corresponds with the unexpired time, after deducting
11 from the whole premium any claim for loss or damage under the
12 policy which has previously accrued. The provisions of Section
13 482 apply only to the expired time.
14 (b) No contract for individual motor vehicle liability or
15 homeowners' multiple-peril insurance may contain a provision

1 which mandates that the premium for ~~such~~ *the* policy shall be fully
2 earned upon the happening of any contingency except the
3 expiration of the policy itself. This subdivision shall not apply to
4 policy fees or membership fees.

5 (c) (1) *Any insurance policy that includes a provision to refund*
6 *premium other than on a pro rata basis, including the assessment*
7 *of cancellation fees, shall separately disclose that fact in writing,*
8 *including a description of the cancellation process and the actual*
9 *fees or penalties to be applied. The disclosure shall be provided*
10 *prior to, or concurrent with, the application and prior to each*
11 *renewal.*

12 (2) *If an application is made by telephone, the disclosure shall*
13 *be mailed to the applicant or insured within three business days.*

14 (3) *The disclosure may be made electronically pursuant to*
15 *Section 38.5.*

16 (4) *This section does not apply to cancellations that are*
17 *calculated subject to paragraph (2) of subdivision (g) of Section*
18 *673.*

19 ~~(e)~~

20 (d) This section shall not apply to policies of ocean marine
21 insurance. For purposes of this section, “ocean marine insurance”
22 means insurance of vessels or crafts, their cargos, marine builders’
23 risks, marine protection and indemnity, or other risks commonly
24 insured under marine insurance governed by the provisions of
25 Chapter 1 (commencing with Section 1880) of Part 1 of Division
26 2, and as distinguished from inland marine insurance policies.

27 SEC. 2. Section 730 of the Insurance Code is amended to read:

28 730. (a) The commissioner, whenever he or she deems
29 necessary or whenever he or she is requested by verified petition,
30 signed by 25 persons interested as shareholders, policyholders, or
31 creditors of any admitted insurer showing that the insurer is
32 insolvent under this code, or upon information that any insurer has
33 violated any provision of Article 7 (commencing with Section
34 800), shall examine the business and affairs of the insurer. The
35 commissioner shall so examine every domestic insurer before
36 issuing to it a certificate of authority other than a renewal.

37 (b) The commissioner may conduct an examination under this
38 article of any company as often as the commissioner in his or her
39 discretion deems appropriate but shall, at a minimum, conduct an
40 examination of every insurer admitted in this state not less

1 frequently than once every five years. In scheduling and
2 determining the nature, scope, and frequency of the examinations,
3 the commissioner shall consider the results of financial statement
4 analyses and ratios, changes in management or ownership, actuarial
5 opinions, reports of independent certified public accountants,
6 market analysis results, including consumer complaint analysis,
7 evaluation of ongoing regulatory activities, analysis of data derived
8 from industry surveys or interrogatories, and other criteria as set
9 forth in the Examiner's Handbook or in the Market Regulation
10 Handbook adopted by the National Association of Insurance
11 Commissioners ~~which~~ *that* are in effect when the commissioner
12 exercises discretion under this section.

13 (c) For purposes of completing an examination of any company
14 under this article, the commissioner may examine or investigate
15 any person, or the business of any person, insofar as the
16 examination or investigation is, in the discretion of the
17 commissioner, necessary or material to the examination of the
18 company.

19 (d) In lieu of an examination under this article of any foreign
20 or alien insurer admitted in this state, the commissioner may accept
21 an examination report on the company as prepared by the insurance
22 department of the company's state of domicile or port-of-entry
23 state until January 1, 1994. Thereafter, these reports may only be
24 accepted if (1) the insurance department was at the time of the
25 examination accredited under the National Association of Insurance
26 Commissioner's Financial Regulation Standards and Accreditation
27 Program, or (2) the examination is performed under the supervision
28 of an accredited insurance department or with the participation of
29 one or more examiners who are employed by an accredited state
30 insurance department and who, after a review of the examination
31 work papers and report, state under oath that the examination was
32 performed in a manner consistent with the standards and procedures
33 required by their insurance department.

34 (e) *The commissioner may forgo a market conduct examination,*
35 *otherwise required by this article, for up to an additional five years*
36 *if information derived from a market analysis process that*
37 *considers criteria, such as prior examination results, consumer*
38 *complaint data, market share, actions taken by other states, and*
39 *information from other sources, does not indicate that an*
40 *examination is warranted.*

1 SEC. 3. Section 12938 of the Insurance Code is amended to
2 read:

3 12938. Notwithstanding any other provision of law, the
4 department shall make available for public inspection and publish
5 on its ~~website~~ *Internet Web site* all of the information described
6 in subdivisions (a) and (b). This information shall be maintained
7 in a current, up-to-date condition. All identifying and privileged
8 information regarding individual policyholders shall be redacted
9 from documents available for public inspection and on the ~~website~~
10 *Internet Web site*.

11 (a) All fully executed stipulations, orders, decisions, settlements,
12 or other forms of agreement resolving market conduct
13 examinations, whether the examinations were finalized, terminated,
14 or suspended, that pertain to unfair or deceptive practices in the
15 business of insurance as defined in Section 790.03.

16 (b) (1) Every adopted *market conduct* report of an examination
17 of ~~unfair or deceptive practices in the business of insurance as~~
18 ~~defined in Section 790.03~~ *an insurer's claims handling practices*
19 that is adopted as filed, or as modified or corrected, by the
20 commissioner pursuant to Section 734.1.

21 (2) The commissioner upon adopting the report shall by certified
22 United States mail transmit a copy of the report to the examined
23 insurer's designated agent for service of process. Within 10
24 business days after the transmittal, the examined insurer may
25 submit comments to the commissioner relating to the adopted
26 report. The comments shall be in a form and length as provided
27 by regulation.

28 (3) Ten business days after the transmittal the commissioner
29 shall publish on the department's ~~website~~ *Internet Web site* the
30 adopted report and any comments submitted by the examined
31 insurer unless a court of competent jurisdiction has stayed the
32 publication of the report.

33 (c) This section may not be construed to require the disclosure
34 of company workpapers or other company documents discovered
35 during the course of an examination or any preliminary report of
36 the examination, except as otherwise permitted by law.

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