

AMENDED IN ASSEMBLY APRIL 14, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2404**

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**Introduced by Assembly Member Hill**

February 19, 2010

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2404, as amended, 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an insured person is entitled to a return of his or her premium if the policy is canceled, rejected, surrendered, or rescinded, as provided.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.

1 (b) No contract for individual motor vehicle liability or  
2 homeowners' multiple-peril insurance may contain a provision  
3 which mandates that the premium for the policy shall be fully  
4 earned upon the happening of any contingency except the  
5 expiration of the policy itself. This subdivision shall not apply to  
6 policy fees or membership fees.

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

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

16 (3) The disclosure may be made electronically pursuant to  
17 Section 38.5.

18 (4) This section does not apply to cancellations that are  
19 calculated subject to paragraph (2) of subdivision (g) of Section  
20 673.

21 (d) This section shall not apply to policies of ocean marine  
22 insurance. For purposes of this section, "ocean marine insurance"  
23 means insurance of vessels or crafts, their cargos, marine builders'  
24 risks, marine protection and indemnity, or other risks commonly  
25 insured under marine insurance governed by the provisions of  
26 Chapter 1 (commencing with Section 1880) of Part 1 of Division  
27 2, and as distinguished from inland marine insurance policies.

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

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

38 (b) The commissioner may conduct an examination under this  
39 article of any company as often as the commissioner in his or her  
40 discretion deems appropriate but shall, at a minimum, conduct an

1 examination of every insurer admitted in this state not less  
2 frequently than once every five years. In scheduling and  
3 determining the nature, scope, and frequency of the examinations,  
4 the commissioner shall consider the results of financial statement  
5 analyses and ratios, changes in management or ownership, actuarial  
6 opinions, reports of independent certified public accountants,  
7 market analysis results, including consumer complaint analysis,  
8 evaluation of ongoing regulatory activities, analysis of data derived  
9 from industry surveys or interrogatories, and other criteria as set  
10 forth in the Examiner's Handbook or in the Market Regulation  
11 Handbook adopted by the National Association of Insurance  
12 Commissioners that are in effect when the commissioner exercises  
13 discretion under this section.

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

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

35 (e) The commissioner may forgo a market conduct examination,  
36 otherwise required by this article, for up to an additional five years  
37 if information derived from a market analysis process that considers  
38 criteria, such as prior examination results, consumer complaint  
39 data, market share, actions taken by other states, and information

1 from other sources, does not indicate that an examination is  
2 warranted.

3 ~~SEC. 3. Section 12938 of the Insurance Code is amended to~~  
4 ~~read:~~

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

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

18 ~~(b) (1) Every adopted market conduct report of an examination~~  
19 ~~of an insurer's claims handling practices that is adopted as filed,~~  
20 ~~or as modified or corrected, by the commissioner pursuant to~~  
21 ~~Section 734.1.~~

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

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

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