

AMENDED IN ASSEMBLY APRIL 27, 2010

AMENDED IN ASSEMBLY APRIL 14, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2404

Introduced by Assembly Member Hill

February 19, 2010

An act to amend Sections 481 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an insured person is entitled to a return of his or her premium if the policy is canceled, rejected, surrendered, or rescinded, as provided.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~~ *postpone* a market conduct examination, otherwise required, for up to ~~an additional 5~~ 3 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~~ *indicates that the prior examination of the insurer resulted in no significant negative findings, the number of consumer complaints received by the insurer is in the lowest quartile of complaints, on a ratio basis, for insurers in that line of business, and the market analysis identifies no other issues of significant concern.*

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
- 16 which mandates that the premium for the policy shall be fully
- 17 earned upon the happening of any contingency except the

1 expiration of the policy itself. This subdivision shall not apply to
2 policy fees or membership fees.

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

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

12 (3) The disclosure may be made electronically pursuant to
13 Section 38.5 *in lieu of being mailed*.

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

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

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

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

34 (b) The commissioner may conduct an examination under this
35 article of any company as often as the commissioner in his or her
36 discretion deems appropriate but shall, at a minimum, conduct an
37 examination of every insurer admitted in this state not less
38 frequently than once every five years. In scheduling and
39 determining the nature, scope, and frequency of the examinations,
40 the commissioner shall consider the results of financial statement

1 analyses and ratios, changes in management or ownership, actuarial
2 opinions, reports of independent certified public accountants,
3 market analysis results, including consumer complaint analysis,
4 evaluation of ongoing regulatory activities, analysis of data derived
5 from industry surveys or interrogatories, and other criteria as set
6 forth in the Examiner's Handbook or in the Market Regulation
7 Handbook adopted by the National Association of Insurance
8 Commissioners that are in effect when the commissioner exercises
9 discretion under this section.

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

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

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

38 *(e) The commissioner may postpone a market conduct*
39 *examination, otherwise required by this article, for a period of up*

1 *to three years if information derived from a market analysis*
2 *indicates all of the following:*

3 *(1) The prior examination of the insurer resulted in no*
4 *significant negative findings.*

5 *(2) The number of consumer complaints received by the insurer*
6 *is in the lowest quartile of complaints, on a ratio basis, for insurers*
7 *in that line of business.*

8 *(3) The market analysis identifies no other issues of significant*
9 *concern.*

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