

Assembly Bill No. 2404

CHAPTER 387

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

[Approved by Governor September 25, 2010. Filed with
Secretary of State September 27, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2404, 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an insured person is entitled to a return of his or her premium if the policy is canceled, rejected, surrendered, or rescinded, as provided.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, disclose that fact in writing, including the actual or maximum fees or penalties applied, which would be permitted to be stated in the form of percentages of the premium. The disclosure would be required to be made prior to, or concurrent with, the application and prior to each renewal, as provided. The disclosure would not be required if the policy provision permits, but does not require, the insurer to refund a premium other than on a pro rata basis, and the insurer refunds the premium on a pro rata basis. If an application is made by telephone, the disclosure would be required to be mailed to the applicant or insured within 5 business days. The disclosure requirements would apply prospectively and only to policies issued or renewed on or after January 1, 2012. This bill would not require any additional disclosure of a fee or penalty for early cancellation if that disclosure is required by any other provision of law.

(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 that are in effect at the time of the examination.

This bill would authorize the commissioner to postpone a market conduct examination, otherwise required, for up to 3 years if information derived from a market analysis 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.

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

SECTION 1. Section 481 of the Insurance Code is amended to read:

481. (a) Unless the insurance contract otherwise provides, a person insured is entitled to a return of his or her premium if the policy is canceled, rejected, surrendered, or rescinded, as follows:

(1) To the whole premium, if the insurer has not been exposed to any risk of loss.

(2) Where the insurance is made for a definite period of time and the insured surrenders his or her policy, to such proportion of the premium as corresponds with the unexpired time, after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued. The provisions of Section 482 apply only to the expired time.

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

(c) (1) Any insurance policy that includes a provision to refund premium other than on a pro rata basis, including the assessment of cancellation fees, shall disclose that fact in writing, including the actual or maximum fees or penalties to be applied, which may be stated in the form of percentages of the premium. The disclosure shall be provided prior to, or concurrent with, the application and prior to each renewal to which the policy provision applies. Disclosure shall not be required if the policy provision permits, but does not require, the insurer to refund premium other than on a pro rata basis, and the insurer refunds premium on a pro rata basis.

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

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

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

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

(e) The disclosure requirements of subdivision (c) shall be prospective and shall apply only to policies issued or renewed on or after January 1, 2012.

(f) Nothing in this section shall require any additional disclosure of a fee or penalty for early cancellation if that disclosure is required by any other provision of law.

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

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

(b) The commissioner may conduct an examination under this article of any company as often as the commissioner in his or her discretion deems appropriate but shall, at a minimum, conduct an examination of every insurer admitted in this state not less frequently than once every five years. In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner shall 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 that are in effect when the commissioner exercises discretion under this section.

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

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

consistent with the standards and procedures required by their insurance department.

(e) The commissioner may postpone a market conduct examination otherwise required by this article for a period of up to three years if information derived from a market analysis indicates all of the following:

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

(2) 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.

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