

JAN 18 2012

A BILL FOR AN ACT

RELATING TO INSURANCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 431, article 10, Hawaii Revised
2 Statutes, is amended by adding a new part to be appropriately
3 designated and to read as follows:

4 "PART . HOMEOWNERS INSURANCE CLAIMS HISTORY.

5 §431:10- **Purpose.** The purpose of this part is to
6 regulate the use of claims history information for homeowners
7 insurance and provide certain consumer protections with respect
8 to the use of this information.

9 §431:10- **Scope; effective dates.** This part shall apply
10 to all homeowners insurance policies delivered or issued for
11 delivery in this State after July 31, 2012.

12 §431:10- **Definitions.** As used in this part:

13 "Adverse action" means any of the following in connection
14 with the underwriting of homeowners insurance:

15 (1) A denial or cancellation of coverage;

16 (2) An increase in any charge; or

17 (3) A reduction or other adverse or unfavorable change in
18 the terms of coverage of any insurance, regardless of



1 whether the insurance is in existence or has been
2 applied for.

3 "Claim" means a request to an insurer for payment of a
4 benefit by an insured or third party, except the term shall not
5 include a mere report of loss or a question relating to
6 coverage.

7 "Claims history report" means information provided by a
8 claims history report provider to an insurer, insurance
9 producer, or other authorized party regarding the claims history
10 or loss experience of natural persons or property.

11 "Claims history report provider" means any person that
12 regularly engages in the practice of assembling, collecting, or
13 disseminating information regarding the individual claims
14 history of natural persons or properties for the primary purpose
15 of providing such information to insurers, insurance producers,
16 or other authorized parties for underwriting or rating, except
17 the term shall not include government institutions, insurers,
18 and insurance producers.

19 "Consumer" means an insured or an applicant for insurance
20 coverage.

21 "Inquiry" means a telephone call or other communication
22 made to an insurer regarding the terms, conditions, or coverage



1 afforded under an insurance contract that does not result in a
2 claim, including questions concerning whether a policy will
3 cover a loss or the process for filing a claim. The term shall
4 not constitute a claim for purposes of section 431:13-
5 103(a)(11).

6 "Insurance producer" means a person required to be licensed
7 under the laws of this State to sell, solicit, or negotiate
8 homeowners insurance.

9 "Insurer" means any person, firm, association, or
10 corporation duly licensed and authorized in this State to issue
11 homeowners insurance.

12 §431:10- Use of insurance claims history information
13 generally. (a) An insurer that uses insurance claims history
14 or loss experience information to underwrite or rate risks shall
15 not refuse to issue, refuse to renew, or cancel a homeowners
16 insurance contract, or establish rates for coverage based solely
17 on the claims history or loss experience of a previous owner of
18 the property to be insured.

19 (b) If an insurer fails to act upon the information
20 contained in a claims history report within thirty days of
21 binding coverage, the insurer shall be precluded from declining
22 homeowners insurance or terminating coverage based on that



1 information. This subsection shall not apply if the insurer has
2 commenced a further investigation, inspection, or other review
3 of the property to be insured as a result of information
4 contained in the report within the thirty day period and the
5 investigation, inspection, or other review has not yet
6 concluded. This subsection shall not apply to the renewal of an
7 insurance policy.

8 (c) When a consumer applies for homeowners insurance, an
9 insurer may not consider or take an adverse action based upon
10 information contained in a claims history report that is more
11 than five years old.

12 (d) Notwithstanding subsections (a) and (b) to the
13 contrary, an insurer may refuse to issue, refuse to renew, or
14 cancel homeowners insurance coverage, or establish rates for
15 coverage based on the known condition or use of the premises, or
16 due to fraudulent acts of the consumer.

17 **§431:10- Use of inquiries and other information. (a)**
18 An insurer shall not refuse to issue, refuse to renew, or cancel
19 a homeowners insurance contract, or establish rates for coverage
20 based in whole or in part on inquiries made by any consumer to
21 an insurer.



1 (b) An insurer shall not refuse to issue, refuse to renew,
2 or cancel homeowners insurance coverage, or establish rates for
3 coverage based in whole or in part on claims that have been
4 closed without payment to or on behalf of an insured or third
5 party, unless:

- 6 (1) More than one incident has occurred within the
7 previous three years; or
8 (2) The claim that was closed without payment affects the
9 nature of the risk and is predictive of future loss.

10 (c) Notwithstanding subsections (a) and (b) to the
11 contrary, an insurer may refuse to issue, refuse to renew, or
12 cancel homeowners insurance coverage, or establish rates for
13 coverage based on the known condition or use of the premises, or
14 due to fraudulent acts of the consumer.

15 §431:10- Dispute resolution and error correction. (a)
16 If it is determined through the dispute resolution process set
17 forth in the federal Fair Credit Reporting Act, 15 U.S.C.
18 1681i(a)(5), that the claims history information of an insured
19 or property was incorrect or incomplete and if a homeowners
20 insurer receives notice of this determination from either a
21 consumer reporting agency or from the insured, the insurer shall
22 re-underwrite and re-rate the consumer within thirty days of



1 receiving the notice. After re-underwriting or re-rating the
2 insured, the insurer shall make any adjustments necessary,
3 consistent with its underwriting and rating guidelines. If an
4 insurer determines that the insured has overpaid their premium,
5 the insurer shall refund to the insured the amount of
6 overpayment calculated back to the shorter of either the last
7 twelve months of coverage or the actual policy period.

8 **§431:10- Disclosure to insurance consumers.** (a) If an
9 insurer writing homeowners insurance uses claims history or loss
10 experience in underwriting or rating, the insurer shall
11 disclose, either on the insurance application or at the time the
12 insurance application is taken, that it may obtain claims
13 history or loss experience information in connection with the
14 application. The disclosure may be oral, written, or in
15 electronic form. The disclosure shall explain the ways in which
16 the insurer uses claims history or loss experience information,
17 whether the claims history of the applicant and or property to
18 be insured will be reviewed, and whether further claims incurred
19 by the applicant will be reported to a claims history report
20 provider.



1 (b) If a homeowners insurer takes an adverse action based
2 upon the claims history report of a consumer or property, the
3 insurer shall:

4 (1) Provide notification to the consumer than an adverse
5 action has been taken, in accordance with the
6 requirements of the federal Fair Credit Reporting Act,
7 15 U.S.C. 1681, et seq., if applicable; or

8 (2) Provide notification, upon request, to the consumer
9 identifying the claim information that resulted in the
10 adverse action.

11 An insurer may comply with this subsection by providing the
12 requisite disclosure and claims information in any declination,
13 nonrenewal, premium increase or surcharge, adverse action, or
14 other notice required under other applicable law.

15 **§431:10- Treatment of certain information.** (a) A
16 homeowners insurer shall not disclose or submit to any claims
17 history report provider or any other consumer reporting agency
18 that an inquiry was made to the insurer by a consumer.

19 (b) A claims history report provider shall not knowingly
20 provide an insurer, insurance producer, or any other person with
21 a claims history report that discloses that an inquiry was made
22 to an insurer by a consumer.



1 §431:10- Disclosures by claims history report providers.

2 A claims history report provider shall disclose the codes,
3 classifications, and guidelines utilized in its claims history
4 reports to the commissioner, upon request."

5 SECTION 2. If any provision of this Act, or the
6 application thereof to any person or circumstance, is held
7 invalid, the invalidity does not affect other provisions or
8 applications of the Act that can be given effect without the
9 invalid provision or application, and to this end the provisions
10 of this Act are severable.

11 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: Rosalyn H. Baker

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S.B. NO. 2009

Report Title:

Insurance; Claims History

Description:

Regulates the use of claims history information for homeowners insurance by insurers.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

