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# A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

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

1           SECTION 1. The legislature finds that, after significant  
2 weather events, contractors often swarm into neighborhoods with  
3 promises to provide homeowners new roofs "at no cost to them",  
4 convincing homeowners to sign binding contracts to replace the  
5 entire roof. In cases where there has been substantial damage  
6 requiring a complete roof replacement, this not a problem;  
7 however, in many instances a subsequent inspection by a  
8 qualified adjuster reveals that the roof sustained minimal or no  
9 damage, and the insurer must limit the claim to the cost to  
10 repair the actual damage, if any. In those situations,  
11 homeowners find themselves responsible for the cost with no  
12 recourse.

13           The legislature further finds that following catastrophic  
14 storms, when contractors may be in short supply, unscrupulous  
15 individuals may take advantage of such circumstances and  
16 represent themselves as insurance claims experts who can obtain  
17 insurance proceeds to fix a house, even when the individuals are



1 not licensed independent adjusters. The legislature believes  
2 that stronger consumer protection measures must be taken to  
3 protect Hawaii residents from this kind of unscrupulous  
4 predatory behavior.

5 Accordingly, the purpose of this Act is to protect  
6 homeowners from unsolicited offers to repair their homes  
7 predicated on the receipt of insurance proceeds by:

- 8 (1) Prohibiting residential contractors from offering to  
9 pay, in any monetary form, a homeowners insurance  
10 deductible as an incentive to encourage the homeowner  
11 to hire the contractor;
- 12 (2) Allowing an insured to rescind a contract to repair or  
13 replace roof systems or other exterior work within  
14 five business days of receiving notice from a  
15 homeowners insurer that all or part of the claim or  
16 contract is not a covered loss under a homeowners  
17 insurance policy; and
- 18 (3) Prohibiting a contractor from knowingly and  
19 intentionally acting as a public adjuster.



1 SECTION 2. Chapter 444, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§444- Residential contractors; roof systems;  
5 homeowners insurance policies; deductibles; rescission. (a) A  
6 residential contractor shall not advertise or promise to pay or  
7 rebate any portion, including the entire portion, of any  
8 homeowners insurance deductible as an inducement to the sale of  
9 goods or services. As used in this subsection, a promise to pay  
10 or rebate includes granting any allowance against the fees to be  
11 charged; paying to the insured any form of compensation; or  
12 providing to the insured any gift, prize, bonus, coupon, credit,  
13 referral fee, or any other item of monetary value for any  
14 reason, including but not limited to permitting the residential  
15 contractor to display a sign or any other type of advertisement  
16 at the insured's premises.

17 (b) A person who has entered into a written contract with  
18 a residential contractor to provide goods and services to be  
19 paid from the proceeds of a homeowners insurance policy may  
20 rescind the contract prior to midnight on the fifth business day  
21 after the insured has been notified by the homeowners insurer



1 that all or any part of the claim or contract is not a covered  
2 loss under the homeowners insurance policy. Rescission is  
3 evidenced by the insured giving written notice of rescission to  
4 the residential contractor at the address stated in the  
5 contract; provided that if notice of rescission is given by  
6 mail, the notice shall be effective upon deposit in the United  
7 States mail, postage prepaid and properly addressed to the  
8 residential contractor. Notice of rescission need not take any  
9 particular form and is sufficient if the notice indicates, by  
10 any form of written expression, the intention of the insured not  
11 to be bound by the contract; provided that any notice of  
12 rescission shall include a copy of the notice by the homeowners  
13 insurer that all or any part of the claim or contract is not a  
14 covered loss under the homeowners insurance policy.

15 (c) Within ten days of the rescission of a contract  
16 pursuant to subsection (b), the residential contractor shall  
17 tender to the insured of the residential real estate any  
18 payments, partial payments, or deposits made and any note or any  
19 other evidence of indebtedness; provided that if the residential  
20 contractor has performed any emergency services, which have been  
21 acknowledged by the insured in writing as necessary to prevent



1 damage to the residential real estate premises, the residential  
2 contractor shall be entitled to the reasonable value of such  
3 services. Any provision in a contract for goods or services to  
4 be paid from the proceeds of a homeowners insurance policy that  
5 requires the payment of any fee for anything except emergency  
6 services shall not be enforceable against an insured who has  
7 rescinded a contract pursuant to subsection (b).

8 (d) A contract entered into pursuant to subsection (b)  
9 shall contain the following notices, in a type size no smaller  
10 than ten-point boldface type:

11 (1) A notice of right to rescind form in substantially the  
12 following form:

13 "You may rescind this contract at any time before  
14 midnight on the fifth business day after you have been  
15 notified by your insurer that all or any part of the  
16 claim or contract is not a covered loss under your  
17 homeowners' insurance policy. See attached notice of  
18 rescission form for an explanation of this right.";  
19 and

20 (2) A notice of rescission form, in duplicate, attached to  
21 the contract and easily detachable, completed with the



1 name of the residential contractor and the address  
2 where the notice of cancellation is to be delivered,  
3 in substantially the following form:

4 "NOTICE OF RESCISSION

5 If you are notified by your insurer that all or any  
6 part of the claim or contract is not a covered loss  
7 under your homeowners insurance policy, you may  
8 rescind the contract by mailing or delivering a signed  
9 and dated copy of this rescission notice or any other  
10 written notice to [name of residential contractor] at  
11 [address of residential contractor's place of  
12 business] at any time prior to midnight on the fifth  
13 business day after you have received such notice from  
14 your insurer. If you rescind, any payment made by you  
15 under the contract, except for certain emergency work  
16 already performed by the residential contractor, will  
17 be returned to you within ten business days following  
18 receipt by the residential contractor of your  
19 rescission notice.

20 I HEREBY RESCIND THIS TRANSACTION

21 \_\_\_\_\_



1            (Date)

2

3            \_\_\_\_\_

4            (Insured's signature)"

5            (e) A residential contractor shall not represent or  
6 negotiate, or offer or advertise to represent or negotiate, on  
7 behalf of an insured on any homeowners insurance claim in  
8 connection with the repair or replacement of roof systems, or  
9 the performance of any other exterior repair, replacement,  
10 construction, or reconstruction work.

11           (f) Any violation of this section by a residential  
12 contractor shall be considered an unfair method of competition  
13 and unfair or deceptive act or practice under chapter 480.

14           (g) For purposes of this section:

15           "Residential contractor" means a person or entity in the  
16 business of contracting or offering to contract with an insured  
17 who is an owner or possessor of residential real estate to  
18 repair or replace roof systems or perform any other exterior  
19 repair, replacement, construction, or reconstruction work on  
20 residential real estate.



1       "Residential real estate" means a new or existing building  
2 constructed for habitation by one to four families, including  
3 detached garages.

4       "Roof system" includes roof coverings, roof sheathing, roof  
5 weatherproofing, and insulation."

6       SECTION 3. Section 444-17, Hawaii Revised Statutes, is  
7 amended to read as follows:

8       "**§444-17 Revocation, suspension, and renewal of licenses.**

9 In addition to any other actions authorized by law, the board  
10 may revoke any license issued pursuant to this section, or  
11 suspend the right of a licensee to use a license, or refuse to  
12 renew a license for any cause authorized by law, including:

- 13       (1) Any dishonest, fraudulent, or deceitful act as a
- 14             contractor that causes substantial damage to another;
- 15       (2) Engaging in any unfair or deceptive act or practice as
- 16             prohibited by section 480-2;
- 17       (3) Abandonment of any construction project or operation
- 18             without reasonable or legal excuse;
- 19       (4) Wilful diversion of funds or property received for
- 20             prosecution or completion of a specific construction
- 21             project or operation, or for a specified purpose in





- 1 the prosecution or completion of any construction  
2 project or operation, and the use thereof for any  
3 other purpose;
- 4 (5) Wilful departure from, or wilful disregard of plans or  
5 specifications in any material respect without consent  
6 of the owner or the owner's duly authorized  
7 representative, that is prejudicial to a person  
8 entitled to have the construction project or operation  
9 completed in accordance with those plans and  
10 specifications;
- 11 (6) Wilful violation of any law of the State, or any  
12 county, relating to building, including any violation  
13 of any applicable rule of the department of health, or  
14 of any applicable safety or labor law;
- 15 (7) Failure to make and keep records showing all  
16 contracts, documents, records, receipts, and  
17 disbursements by a licensee of all the licensee's  
18 transactions as a contractor for a period of not less  
19 than three years after completion of any construction  
20 project or operation to which the records refer or to  
21 permit inspection of those records by the board;



- 1 (8) When the licensee being a partnership or a joint  
2 venture permits any partner, member, or employee of  
3 the partnership or joint venture who does not hold a  
4 license to have the direct management of the  
5 contracting business thereof;
- 6 (9) When the licensee being a corporation permits any  
7 officer or employee of the corporation who does not  
8 hold a license to have the direct management of the  
9 contracting business thereof;
- 10 (10) Misrepresentation of a material fact by an applicant  
11 in obtaining a license;
- 12 (11) Failure of a licensee to complete in a material  
13 respect any construction project or operation for the  
14 agreed price if the failure is without legal excuse;
- 15 (12) Wilful failure in any material respect to comply with  
16 this chapter or the rules adopted pursuant thereto;
- 17 (13) Wilful failure or refusal to prosecute a project or  
18 operation to completion with reasonable diligence;
- 19 (14) Wilful failure to pay when due a debt incurred for  
20 services or materials rendered or purchased in  
21 connection with the licensee's operations as a



1 contractor when the licensee has the ability to pay or  
2 when the licensee has received sufficient funds  
3 therefor as payment for the particular operation for  
4 which the services or materials were rendered or  
5 purchased;

6 (15) The false denial of any debt due or the validity of  
7 the claim therefor with intent to secure for a  
8 licensee, the licensee's employer, or other person,  
9 any discount of the debt or with intent to hinder,  
10 delay, or defraud the person to whom the debt is due;

11 (16) Failure to secure or maintain workers' compensation  
12 insurance, unless the licensee is authorized to act as  
13 a self-insurer under chapter 386 or is excluded from  
14 the requirements of chapter 386;

15 (17) Entering into a contract with an unlicensed contractor  
16 involving work or activity for the performance of  
17 which licensing is required under this chapter;

18 (18) Performing service on a residential or commercial air  
19 conditioner using CFCs without using refrigerant  
20 recovery and recycling equipment;



- 1           (19) Performing service on any air conditioner after  
2           January 1, 1994, without successful completion of an  
3           appropriate training course in the recovery and  
4           recycling of CFC and HCFC refrigerants, which included  
5           instruction in the proper use of refrigerant recovery  
6           and recycling equipment that is certified by  
7           Underwriters Laboratories, Incorporated;
- 8           (20) Violating chapter 342C;
- 9           (21) Failure to pay delinquent taxes, interest, and  
10          penalties assessed under chapter 237 that relate to  
11          the business of contracting, or to comply with the  
12          terms of a conditional payment plan with the  
13          department of taxation for the payment of such  
14          delinquent taxes, interest, and penalties; ~~and~~
- 15          (22) Knowingly or intentionally employing a person to  
16          perform work under a contract subject to chapter 104  
17          who is not eligible to work in the United States under  
18          federal law[-]; and
- 19          (23) Knowingly or intentionally acting as a public adjuster  
20          as defined in section 431:9-105."



1 SECTION 4. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect on July 1, 2050.



**Report Title:**

Consumer Protection; Residential Contractors; Roof Systems;  
Homeowners Insurance; Deductibles; Right of Rescission

**Description:**

Prohibits residential contractors from offering to pay, in any monetary form, a homeowners insurance deductible as an incentive to encourage the homeowner to hire the contractor. Allows an insured to rescind a contract to repair or replace roof systems or other exterior work within five business days of receiving notice from a homeowners insurer that all or part of the claim or contract is not a covered loss under an homeowners insurance policy. Authorizes the Contractors License Board to suspend, revoke, or refuse to renew the license of any contractor acting as a public adjuster. Effective 7/1/2050. (HD1)

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