

JAN 22 2021

A BILL FOR AN ACT

RELATING TO ROOFING CONTRACTORS.

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

1 SECTION 1. The legislature finds that there are
2 individuals referred to as "storm chasers" in the roofing
3 industry who make unsolicited offers to homeowners to repair
4 their houses or roofs after significant weather events,
5 predicated on the homeowners receiving insurance proceeds for
6 the repairs. Many of these offers promise homeowners new roofs
7 or roof systems at no cost to the homeowner, convincing
8 homeowners to sign binding contracts to replace the entire roof.
9 In cases where there has been substantial damage that would
10 require a new roof, there is not usually a problem with these
11 types of contracts. However, often a subsequent inspection is
12 performed by a qualified insurance adjuster, who may determine
13 that the roof sustained only minimal or no damage and limits the
14 claim to the cost to repair the damage, rather than the cost to
15 replace the entire roof. In these situations, homeowners find
16 themselves responsible for the cost of an entire roof
17 replacement with minimal or no insurance coverage.



1 Accordingly, the purpose of this Act is to:

2 (1) Prohibit roofing contractors from advertising or
3 promising to pay or rebate a property insurance
4 deductible, or any portion thereof, to induce an
5 insured homeowner to purchase goods or services;

6 (2) Allow an insured to rescind a contract with a roofing
7 contractor within five business days of receiving
8 notice from their insurer that all or any part of the
9 claim or contract is not a covered loss under the
10 insured's property or casualty insurance policy;

11 (3) Require roofing contractors to deliver certain forms
12 to consumers advising them of their legal right to
13 rescind the contract;

14 (4) Require roofing contractors to return funds to a
15 consumer in certain circumstances;

16 (5) Prohibit roofing contractors from representing or
17 negotiating, or offering or advertising to represent
18 or negotiate, on behalf of an insured any insurance
19 claim in connection with the repair or replacement of
20 roof systems, or the performance of any other exterior



1 repair, replacement, construction, or reconstruction
2 work; and

3 (6) Allowing the contractors license board to revoke,
4 suspend, or refuse to renew a contractor's license if
5 the licensee performs as a public adjuster without a
6 public adjuster license.

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

10 "§444- Roofing contractors; promises to pay or rebate
11 insurance deductible; inducement of sale of goods or services;
12 right to rescind. (a) A roofing contractor shall not advertise
13 or promise to pay or rebate a property insurance deductible, or
14 any portion thereof, to induce an insured to purchase goods or
15 services.

16 (b) An insured who has entered into a written contract
17 with a roofing contractor to provide goods and services to be
18 paid from the proceeds of a property or casualty insurance
19 policy claim may rescind the contract at any time prior to
20 midnight on the fifth business day after the insured has been
21 notified by the insurer that all or any part of the claim or



1 contract is not a covered loss under the insured's property or
2 casualty insurance policy. Rescission shall be evidenced by the
3 insured providing written notice of rescission to the roofing
4 contractor at the address stated in the contract. Notice of
5 rescission, if provided by mail, shall be effective upon deposit
6 in the United States mail, postage prepaid and properly
7 addressed. Notice of rescission shall not take a particular
8 form and is sufficient so long as it indicates, by any form of
9 written expression, the intention of the insured not to be bound
10 by the contract.

11 (c) Prior to entering into a contract with an insured for
12 goods and services to be paid from the proceeds of a property or
13 casualty insurance policy claim, the roofing contractor shall:

14 (1) Furnish the insured in bold-face type of a minimum
15 size of ten-point font, a statement in substantially
16 the following form:

17 "You may rescind this contract at any time before
18 midnight on the fifth business day after you have been
19 notified by your insurer that all or any part of the
20 claim or contract is not a covered loss under your



1 insurance policy. See attached notice of rescission
2 form for an explanation of this right."; and
3 (2) Furnish each insured a fully completed form in
4 duplicate, captioned "NOTICE OF RESCISSION", which
5 shall be attached to the contract but easily
6 detachable, and which shall contain boldface type of a
7 minimum size of ten points, the following statement:

8 "NOTICE OF RESCISSION

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



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1 business days following receipt by the contractor of
2 your rescission notice.

3 I HEREBY RESCIND THIS CONTRACT.

4 _____ (date)

5 _____

6 (insured's signature)"

7 (d) Within ten days after an insured has rescinded a
8 contract pursuant to this section, the roofing contractor shall
9 tender to the insured any payments, partial payments, or
10 deposits made and any note or other evidences of indebtedness.

11 If, however, the roofing contractor has performed any emergency
12 services, acknowledged by the insured in writing to be necessary
13 to prevent damage to the residential property, the roofing
14 contractor is entitled to the reasonable value of such services.

15 Any provision in a contract for goods and services to be paid
16 from the proceeds of an insurance claim for anything except
17 emergency services shall not be enforceable against an insured
18 who has rescinded a contract pursuant to this section.

19 (e) A roofing contractor shall not represent or negotiate,
20 or offer or advertise to represent or negotiate, on behalf of an
21 insured any insurance claim in connection with the repair or



1 replacement of roof systems, or the performance of any other
2 exterior repair, replacement, construction, or reconstruction
3 work.

4 (f) Any violation of this section by a roofing contractor
5 shall be deemed an unfair method of competition and an unfair or
6 deceptive act or practice pursuant to chapters 480 and 481B, and
7 shall be subject to those chapters, as well as the provisions of
8 this chapter.

9 (g) For purposes of this section:

10 "Insured" means any named insured, any additional insured,
11 any vendor, any lessor, or any other party identified as an
12 insured under a property or casualty insurance policy.

13 "Promise to pay or rebate" means granting any allowance
14 against the fees to be charged or paying to the insured any form
15 of compensation, gift, prize, bonus, coupon, credit, referral
16 fee, or other item of monetary value for any reason, including
17 but not limited to permitting the roofing contractor to display
18 a sign or any other type of advertisement at the insured's
19 residential property.

20 "Roofing contractor" means a person, including but not
21 limited to a person that is a nonresident roofing contractor,



1 independent contractor, or subcontractor engaged in the business
2 of roofing, gutter, downspout, or siding services for a fee or
3 who offers to engage in or solicits roofing-related services,
4 including construction, installation, renovation, repair,
5 maintenance, alteration, or waterproofing. The term "roofing
6 contractor" does not include a person engaged in the demolition
7 of a structure or the cleanup of construction waste and debris
8 that contains roofing material, nor a person providing roofing
9 services to a residential building for more than four units, nor
10 a person engaged in building a new home or housing development."

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

13 **"§444-17 Revocation, suspension, and renewal of licenses.**

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

- 18 (1) Any dishonest, fraudulent, or deceitful act as a
19 contractor that causes substantial damage to another;
20 (2) Engaging in any unfair or deceptive act or practice as
21 prohibited by section 480-2;



- 1 (3) Abandonment of any construction project or operation
2 without reasonable or legal excuse;
- 3 (4) Wilful diversion of funds or property received for
4 prosecution or completion of a specific construction
5 project or operation, or for a specified purpose in
6 the prosecution or completion of any construction
7 project or operation, and the use thereof for any
8 other purpose;
- 9 (5) Wilful departure from, or wilful disregard of plans or
10 specifications in any material respect without consent
11 of the owner or the owner's duly authorized
12 representative, that is prejudicial to a person
13 entitled to have the construction project or operation
14 completed in accordance with those plans and
15 specifications;
- 16 (6) Wilful violation of any law of the State, or any
17 county, relating to building, including any violation
18 of any applicable rule of the department of health, or
19 of any applicable safety or labor law;
- 20 (7) Failure to make and keep records showing all
21 contracts, documents, records, receipts, and



1 disbursements by a licensee of all the licensee's
2 transactions as a contractor for a period of not less
3 than three years after completion of any construction
4 project or operation to which the records refer or to
5 permit inspection of those records by the board;

6 (8) When the licensee being a partnership or a joint
7 venture permits any partner, member, or employee of
8 the partnership or joint venture who does not hold a
9 license to have the direct management of the
10 contracting business thereof;

11 (9) When the licensee being a corporation permits any
12 officer or employee of the corporation who does not
13 hold a license to have the direct management of the
14 contracting business thereof;

15 (10) Misrepresentation of a material fact by an applicant
16 in obtaining a license;

17 (11) Failure of a licensee to complete in a material
18 respect any construction project or operation for the
19 agreed price if the failure is without legal excuse;

20 (12) Wilful failure in any material respect to comply with
21 this chapter or the rules adopted pursuant thereto;



- 1 (13) Wilful failure or refusal to prosecute a project or
2 operation to completion with reasonable diligence;
- 3 (14) Wilful failure to pay when due a debt incurred for
4 services or materials rendered or purchased in
5 connection with the licensee's operations as a
6 contractor when the licensee has the ability to pay or
7 when the licensee has received sufficient funds
8 therefor as payment for the particular operation for
9 which the services or materials were rendered or
10 purchased;
- 11 (15) The false denial of any debt due or the validity of
12 the claim therefor with intent to secure for a
13 licensee, the licensee's employer, or other person,
14 any discount of the debt or with intent to hinder,
15 delay, or defraud the person to whom the debt is due;
- 16 (16) Failure to secure or maintain workers' compensation
17 insurance, unless the licensee is authorized to act as
18 a self-insurer under chapter 386 or is excluded from
19 the requirements of chapter 386;



- 1 (17) Entering into a contract with an unlicensed contractor
2 involving work or activity for the performance of
3 which licensing is required under this chapter;
- 4 (18) Performing service on a residential or commercial air
5 conditioner using CFCs without using refrigerant
6 recovery and recycling equipment;
- 7 (19) Performing service on any air conditioner after
8 January 1, 1994, without successful completion of an
9 appropriate training course in the recovery and
10 recycling of CFC and HCFC refrigerants, which included
11 instruction in the proper use of refrigerant recovery
12 and recycling equipment that is certified by
13 Underwriters Laboratories, Incorporated;
- 14 (20) Violating chapter 342C;
- 15 (21) Failure to pay delinquent taxes, interest, and
16 penalties assessed under chapter 237 that relate to
17 the business of contracting, or to comply with the
18 terms of a conditional payment plan with the
19 department of taxation for the payment of such
20 delinquent taxes, interest, and penalties; [~~and~~]



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Report Title:

Roofing Contractors; Insurance; Right to Rescind

Description:

Prohibits roofing contractors from offering to pay, in any monetary form, an insured's insurance deductible as an incentive to encourage the insured to hire the contractor. Allows insureds to rescind contracts with roofing contractors within five business days of receiving notification from an insurer that all or any part of a claim or contract is not a covered loss under the insured's insurance policy. Allows the Contractors License Board to revoke, suspend, or refuse to renew a contractor's license if the contractor performs as a public adjuster without a public adjuster license.

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

