

JAN 21 2022

A BILL FOR AN ACT

RELATING TO CONTRACTOR PRACTICES.

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 construction
3 industry who make unsolicited offers to insured property owners
4 to repair their insured premises after significant weather
5 events, predicated on the insured receiving insurance proceeds
6 for their repairs. Many of these predator contractors offer
7 promises to property owners for repairs and improvements at no
8 cost to the property owner, baiting them to sign binding
9 contracts to perform the work. Often a subsequent inspection of
10 is performed by a qualified and Hawaii-licensed insurance
11 adjuster, who may determine that the property sustained only
12 minimal damage and therefore limits the claim to the cost of the
13 actual damages incurred to the property. In certain cases,
14 property owners find themselves being held responsible for the
15 cost of entire rebuilding projects, with only little or no
16 regard to any actual insurance proceeds.

17 Accordingly, the purpose of this Act is to:



- (1) Prohibit a contractor from advertising or promising to pay or rebate a property or casualty insurance deductible, or any portion thereof, to induce an insured property owner to purchase goods or services;
- (2) Allow an insured to rescind a contract with a contractor within five business days after the date the contract is executed;
- (3) Require a contractor to furnish a property owner with a written five-business-day right of rescission form advising the property owner of the legal right to rescind the contract within the allotted time;
- (4) Require a contractor to return funds to an insured homeowner within five business days of receipt of an executed right of rescission notice; and
- (5) Prohibit a contractor from representing or negotiating, or offering or advertising to represent or negotiate, on behalf of an insured or claimant in connection with the repair or reconstruction work associated with any insurance claim.



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

"§444- Promises to pay or rebate insurance deductible; inducement of sale of goods or services; right to rescind. (a)

A contractor shall not promise to pay or rebate a policyholder's insurance deductible, or any portion thereof, to induce an insured to purchase goods or services.

(b) An insured who has entered into a written contract with a contractor to provide goods and services to be paid from the proceeds of a property or casualty insurance policy claim may rescind the contract at any time prior to midnight on the fifth business day after the date the contract is executed.

Rescission shall be evidenced by the insured providing written notice of rescission to the contractor at the address stated in the contract. Notice of rescission, if provided by mail, shall be effective upon deposit in the United States mail, postage prepaid and properly addressed. Notice of rescission shall not take a particular form and is sufficient so long as it indicates, by any form of written expression, the intention of the insured not to be bound by the contract.



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

4 (1) Furnish the insured, in not less than ten-point
5 boldface type, a statement in substantially the
6 following form:

7 "You may rescind this contract at any time before
8 midnight on the fifth business day after the date of
9 the contract is executed. See attached notice of
10 rescission form for an explanation of this right.";

11 and

12 (2) Furnish each insured a fully completed form in
13 duplicate, captioned "NOTICE OF RESCISSION", which
14 shall be attached to the contract but easily
15 detachable, that shall contain, in not less than ten-
16 point boldface type, the following statement:

17 "NOTICE OF RESCISSION

18 You may rescind the contract by mailing or delivering
19 a signed and dated copy of this rescission notice or
20 any other written notice to (name of contractor) at
21 (address of contractor's place of business) at any



1 time prior to midnight on the fifth business day after
2 the date the contract is executed. If you rescind,
3 any payments made by you under the contract, except
4 for bona fide emergency mitigation work already
5 performed by the contractor, will be returned to you
6 within five business days following receipt by the
7 contractor of your rescission notice.

8 I HEREBY RESCIND THIS CONTRACT.

9 _____ (date)

10 _____
11 (insured's signature)"

12 (d) Within five business days after an insured has
13 rescinded a contract pursuant to this section, the contractor
14 shall tender to the insured any payments, partial payments, or
15 deposits made and any note or other evidences of indebtedness.
16 If the contractor has performed any bona fide emergency
17 mitigation work, acknowledged by the insured in writing to be
18 necessary to mitigate any further damages to the property, the
19 contractor shall be entitled to the reasonable value of the bona
20 fide emergency mitigation work. Any provision in a contract for
21 goods and services to be paid from the proceeds of an insurance



1 claim for anything except bona fide emergency mitigation work
2 shall not be enforceable against an insured who has rescinded a
3 contract pursuant to this section.

4 (e) A contractor shall not represent or negotiate, or
5 offer or advertise to represent or negotiate, on behalf of an
6 insured or a claimant any insurance claim in connection with the
7 repair or reconstruction work associated with the insurance
8 claim.

9 (f) A contractor shall not advertise, solicit, offer to
10 handle, handle, or perform public adjusting services unless
11 licensed under and in compliance with chapter 431. The
12 contractor shall only discuss or explain a written estimate for
13 repair or reconstruction to a property with the insured who has
14 suffered a loss or damages covered by a property or casualty
15 insurance policy. A contractor shall not act as an intermediary
16 or as a third-party consultant in any manner between the insured
17 and the insurer.

18 (g) Any violation of this section by a contractor shall be
19 deemed an unfair method of competition and an unfair or
20 deceptive act or practice pursuant to chapters 480 and 481B and



1 shall be subject to the penalties under this chapter and
2 chapters 480 and 481B.

3 (h) For purposes of this section:

4 "Advertise" includes but is not limited to any printed
5 advertisement in newspapers, magazines, flyers, bulk mailers,
6 websites, electronic mail, internet domains, or any such signage
7 of any type, and television, radio, or oral discussions or any
8 other such broadcasting by any other means.

9 "Insured" means any named insured, any additional insured,
10 any vendor, any lessor, any claimant, or any other party
11 identified as an insured under a property or casualty insurance
12 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 contractor to display a sign
18 or any other type of advertisement at the insured's residential
19 property."



S.B. NO. 2277

1 SECTION 3. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 4. New statutory material is underscored.

5 SECTION 5. This Act shall take effect upon its approval.

6

INTRODUCED BY: Roselynn Baker



S.B. NO. 2277

Report Title:

Contractors; Property or Casualty Insurance; Right to Rescind;
Unfair Methods of Competition; Unfair or Deceptive Acts or
Practices

Description:

Prohibits contractors from offering to pay insureds' property or casualty insurance deductibles as incentives to induce the insureds to hire the contractors. Allows insureds to rescind contracts with the contractors within five business days after the date the contract is executed. Requires contractors to provide certain forms to an insured, prior to entering into a contract. Prohibits contractors from representing or negotiating, or offering or advertising to do so, on behalf of an insured in an insurance claim. Specifies violations are unfair methods of competition and unfair or deceptive acts or practices.

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