
A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1 SECTION 1. Chapter 386, Hawaii Revised Statutes, is
2 amended by adding to Part III, four new sections to be
3 appropriately designated and to read as follows:

4 "§386-A Workers' compensation insurance fraud in the first
5 degree. (a) A person commits the offense of workers'
6 compensation insurance fraud in the first degree if the person
7 intentionally or knowingly violates section 386-98 and where the
8 value of the coverage, benefits, recovery, or compensation
9 obtained or attempted to be obtained or denied or attempted to
10 be denied exceeds \$20,000.

11 (b) Workers' compensation insurance fraud in the first
12 degree is a class B felony.

13 (c) For the purpose of this section, "intentionally" and
14 "knowingly" have the meanings given in section 702-206.

15 "§386-B Workers' compensation insurance fraud in the second
16 degree. (a) A person commits the offense of workers'
17 compensation insurance fraud in the second degree if the person
18 intentionally or knowingly violates section 386-98 and where the



1 value of the coverage, benefits, recovery, or compensation
2 obtained or attempted to be obtained or denied or attempted to
3 be denied exceeds \$300.

4 (b) Workers' compensation insurance fraud in the second
5 degree is a class C felony.

6 (c) For the purpose of this section, "intentionally" and
7 "knowingly" have the meanings given in section 702-206.

8 **§386-C Workers' compensation insurance fraud in the third**

9 **degree.** (a) A person commits the offense of workers'
10 compensation insurance fraud in the third degree if the person
11 intentionally or knowingly violates section 386-98 and where the
12 value of the coverage, benefits, recovery, or compensation
13 obtained or attempted to be obtained or denied or attempted to
14 be denied is \$300 or less.

15 (b) Workers' compensation insurance fraud in the third
16 degree is a misdemeanor.

17 (c) For the purpose of this section, "intentionally" and
18 "knowingly" have the meanings given in section 702-206.

19 **§386-D Workers' compensation insurance fraud;**

20 **administrative penalties.** (a) In lieu of or in addition to
21 the criminal penalties set forth in sections 386-A, 386-B, or
22 386-C, a person who commits workers' compensation insurance



1 fraud as defined under section 386-98 may be subject to the
2 administrative penalties of restitution of the value of benefits
3 or payments fraudulently received under this chapter, whether
4 received from an employer, insurer, or the special compensation
5 fund, to be made to the employer, insurer, or the special
6 compensation fund from which the compensation was received, and
7 one or more of the following:

- 8 (1) A fine of not more than \$10,000 for each violation;
- 9 (2) Suspension or termination of benefits in whole or in
10 part;
- 11 (3) Suspension or disqualification from providing medical
12 care or services, vocational rehabilitation services,
13 or any other service rendered for payment under this
14 chapter;
- 15 (4) Suspension or termination of payments for medical,
16 vocational rehabilitation, or any other service
17 rendered under this chapter;
- 18 (5) Recoupment by the insurer, employer, or special
19 compensation fund of all payments made for medical
20 care, medical services, vocational rehabilitation
21 services, and all other services rendered for payment
22 under this chapter; or

1 (6) Reimbursement of attorney's fees and costs of the
2 party or parties defrauded.

3 (b) With respect to the administrative penalties set forth
4 in subsection (a), no penalty shall be imposed except upon
5 issuance of a written complaint that specifically alleges a
6 violation of this section occurring within two years of the date
7 of that complaint. A copy of the complaint specifying the
8 alleged violation shall be served upon the person charged. The
9 director or board shall issue, where an administrative penalty
10 is ordered, a written decision stating all findings following a
11 hearing held not fewer than twenty days after the service of a
12 written complaint on the person charged. Any person aggrieved
13 by the decision may appeal the decision under sections 386-87
14 and 386-88.

15 (c) For the purpose of this section, "knowingly" means
16 that a person has actual knowledge of the facts; and

17 (1) Acts in deliberate ignorance of the truth or falsity
18 of the facts; or

19 (2) Acts in reckless disregard of the truth or falsity of
20 the facts.

21 No proof of specific intent to defraud is required to prove that
22 a person acted "knowingly" with respect to the facts."



1 SECTION 2. Section 386-98, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§386-98 [~~Fraud violations and penalties.~~] Workers'
4 compensation insurance fraud. (a) [~~A fraudulent insurance act,~~
5 ~~under this chapter, shall include acts or omissions committed by~~
6 ~~any person who intentionally or~~] A person commits the offense of
7 workers' compensation insurance fraud if the person knowingly
8 [~~acts or omits to act so as~~] misrepresents or conceals a
9 material fact, opinion, or intention in order to obtain
10 [~~benefits, deny benefits, obtain benefits compensation for~~
11 ~~services provided, or provides legal assistance or counsel to~~
12 ~~obtain benefits or recovery through fraud or deceit by doing] or~~
13 ~~attempts to obtain or to deny coverage, benefits, recovery, or~~
14 ~~compensation for services, or provides legal assistance or~~
15 ~~counsel to obtain benefits through fraud or deceit if the person~~
16 does any of the following:

- 17 (1) Presenting or causing to be presented any false
18 information on an application;
- 19 (2) Presenting or causing to be presented any false or
20 fraudulent claim for the payment of a loss;
- 21 (3) Presenting multiple claims for the same loss or
22 injury, including presenting multiple claims to more

- 1 than one insurer, except when these multiple claims
2 are appropriate and each insurer is notified
3 immediately in writing of all other claims and
4 insurers;
- 5 (4) Making or causing to be made any false or fraudulent
6 claim for payment or denial of a health care benefit;
- 7 (5) Submitting a claim for a health care benefit that was
8 not used by, or on behalf of, the claimant;
- 9 (6) Presenting multiple claims for payment of the same
10 health care benefit;
- 11 (7) Presenting for payment any undercharges for health
12 care benefits on behalf of a specific claimant unless
13 any known overcharges for health care benefits for
14 that claimant are presented for reconciliation at that
15 same time;
- 16 (8) Misrepresenting or concealing a material fact;
- 17 (9) Fabricating, altering, concealing, making a false
18 entry in, or destroying a document;
- 19 (10) Making or causing to be made any false or fraudulent
20 statements with regard to entitlements or benefits,
21 with the intent to discourage an injured employee from



1 claiming benefits or pursuing a workers' compensation
2 claim; or

3 (11) Making or causing to be made any false or fraudulent
4 statements or claims by, or on behalf of, a client
5 with regard to obtaining legal recovery or benefits.

6 (b) ~~[No]~~ A person, who is an employer ~~[shall wilfully~~
7 ~~make]~~ or employer's representative, commits the offense of
8 workers' compensation insurance fraud if the person knowingly
9 makes a false statement or representation to avoid the impact of
10 past adverse claims experience through change of ownership,
11 control, management, or operation to directly obtain any
12 workers' compensation insurance policy.

13 (c) It shall be ~~[inappropriate]~~ unlawful for any
14 discussion on benefits, recovery, or settlement to include the
15 threat or implication of criminal prosecution. Any threat or
16 implication shall be immediately referred in writing to:

- 17 (1) The state bar if attorneys are in violation;
- 18 (2) The insurance commissioner if an insurer or insurance
19 company personnel are in violation; or
- 20 (3) The regulated industries complaints office if health
21 care providers are in violation, for investigation
22 and, if appropriate, disciplinary action.



1 ~~[(d) An offense under subsections (a) and (b) shall~~
2 ~~constitute a:~~

3 ~~(1) — Class C felony if the value of the moneys obtained~~
4 ~~or denied is not less than \$2,000;~~

5 ~~(2) — Misdemeanor if the value of the moneys obtained or~~
6 ~~denied is less than \$2,000; or~~

7 ~~(3) — Petty misdemeanor if the providing of false~~
8 ~~information did not cause any monetary loss.~~

9 ~~Any person subject to a criminal penalty under this section~~
10 ~~shall be ordered by a court to make restitution to an insurer or~~
11 ~~any other person for any financial loss sustained by the insurer~~
12 ~~or other person caused by the fraudulent act.~~

13 ~~(e) In lieu of the criminal penalties set forth in~~
14 ~~subsection (d), any person who violates subsections (a) and (b)~~
15 ~~may be subject to the administrative penalties of restitution of~~
16 ~~benefits or payments fraudulently received under this chapter,~~
17 ~~whether received from an employer, insurer, or the special~~
18 ~~compensation fund, to be made to the source from which the~~
19 ~~compensation was received, and one or more of the following:~~

20 ~~(1) A fine of not more than \$10,000 for each violation;~~

21 ~~(2) Suspension or termination of benefits in whole or in~~
22 ~~part;~~



- 1 ~~(3) Suspension or disqualification from providing medical~~
2 ~~care or services, vocational rehabilitation services,~~
3 ~~and all other services rendered for payment under this~~
4 ~~chapter;~~
- 5 ~~(4) Suspension or termination of payments for medical,~~
6 ~~vocational rehabilitation and all other services~~
7 ~~rendered under this chapter;~~
- 8 ~~(5) Recoupment by the insurer of all payments made for~~
9 ~~medical care, medical services, vocational~~
10 ~~rehabilitation services, and all other services~~
11 ~~rendered for payment under this chapter; or~~
- 12 ~~(6) Reimbursement of attorney's fees and costs of the~~
13 ~~party or parties defrauded.~~
- 14 ~~(f) With respect to the administrative penalties set forth~~
15 ~~in subsection (c), no penalty shall be imposed except upon~~
16 ~~consideration of a written complaint that specifically alleges a~~
17 ~~violation of this section occurring within two years of the date~~
18 ~~of said complaint. A copy of the complaint specifying the~~
19 ~~alleged violation shall be served promptly upon the person~~
20 ~~charged. The director or board shall issue, where a penalty is~~
21 ~~ordered, a written decision stating all findings following a~~
22 ~~hearing held not fewer than twenty days after written notice to~~



1 ~~the person charged. Any person aggrieved by the decision may~~
2 ~~appeal the decision under sections 386-87 and 386-88.]~~

3 (d) This section shall not supersede any other law
4 relating to theft, fraud, or deception. Workers' compensation
5 insurance fraud may be prosecuted under this chapter or any
6 other applicable statute or common law and all penalties and
7 remedies shall be cumulative.

8 (e) In prosecutions for workers' compensation insurance
9 fraud or related offenses including theft in sections 708-830,
10 708-830.5, 708-831, and 708-833, the offense charged shall be
11 considered an "offense an element of which is either fraud or
12 breach of fiduciary obligation" for the purposes of extending,
13 pursuant to section 701-108(3)(a), the time limitations for
14 prosecutions set forth in section 701-108.

15 (f) The insurance fraud investigations branch of the
16 department of commerce and consumer affairs shall investigate
17 and initiate legal proceedings to enforce workers' compensation
18 insurance fraud relating to both self-insured employers and
19 fully insured employers."

20 SECTION 3. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

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1 SECTION 4. This Act shall take effect on September 1,
2 2006.
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INTRODUCED BY: Mark Moses

Collen Meyer

Barbara Marumoto

[Signature]

Ann V. St.

Ed Stonebraker

Guthrie Kiehn
[Signature]

JAN 20 2006

HB 2026

Report Title:

Workers' compensation

Description:

Criminalizes workers' compensation fraud. Allows insurance fraud investigations branch of department of commerce and consumer affairs to investigate and initiate legal proceedings to enforce workers' compensation fraud laws.

