
A BILL FOR AN ACT

RELATING TO INSURANCE FRAUD.

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

1 SECTION 1. Insurance fraud is reported to cost every
2 United States household an average of \$500 per year. In Hawaii,
3 the cost of motor vehicle insurance fraud alone has been
4 estimated to be over \$164 annually per household. In
5 recognition of the impact that fraud has on the cost of motor
6 vehicle insurance, Act 251, Session Laws of Hawaii 1997, was
7 enacted to establish an insurance fraud investigations unit and
8 motor vehicle insurance fraud violations and penalties. Act 155
9 and Act 275, Session Laws of Hawaii 1998, were enacted the
10 following year to clarify the penalties for the offense of motor
11 vehicle insurance fraud and enhanced and clarified the powers
12 and purpose of the insurance fraud investigations unit to combat
13 motor vehicle insurance fraud.

14 Insurance fraud also has increasingly affected costs within
15 the health insurance industry. Industry health care fraud
16 losses are estimated at three to fourteen per cent of the
17 \$1,200,000,000,000 in annual national health care costs. This
18 is equivalent to approximately \$36,000,000,000 to



1 \$144,000,000,000 annually. In Hawaii, based on the conservative
2 estimate that insurance fraud amounts to three per cent of
3 annual Hawaii health care costs, health insurance fraud causes
4 losses that exceed \$60,000,000 annually. Realizing that
5 insurance fraud is a growing problem in the area of health
6 insurance, health insurance fraud provisions were enacted in Act
7 125, Session Laws of Hawaii 2003. Similar fraud provisions are
8 in place for workers' compensation insurance. None of the
9 health care insurance fraud provisions or the provision for
10 workers' compensation clearly designates a specific law
11 enforcement agency responsible for the investigation and
12 prosecution of these violations.

13 No line of insurance is exempt from insurance fraud.
14 Rather than limit administrative, civil, and criminal penalties
15 for insurance fraud to only a few selected lines of insurance,
16 Hawaii's insurance fraud law should be expanded to include all
17 lines of insurance to deter perpetrators of insurance fraud by
18 demonstrating that no line of insurance will be a safe haven for
19 those who commit insurance fraud.

20 The purpose of this Act is to:

21 (1) Establish the insurance fraud investigations branch to



1 replace the existing insurance fraud investigations
2 unit which was established by Act 251 in 1997, and
3 empower it to investigate and prosecute insurance
4 fraud in all lines of insurance including workers'
5 compensation;

6 (2) Establish administrative, civil, and criminal
7 penalties for offenses of insurance fraud in all lines
8 of insurance; and

9 (3) Establish that fines and settlements resulting from
10 successful insurance fraud prosecutions are to be
11 deposited into the compliance resolution fund to help
12 the insurance fraud investigations branch cover some
13 of the cost of its prevention, investigation, and
14 prosecution of insurance fraud.

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

18 **"PART . INSURANCE FRAUD**

19 **§431:2-A Definitions.** As used in this part, unless the
20 context otherwise require:



1 "Branch" means the insurance fraud investigations branch of
2 the insurance division.

3 "Insurance policy" means a contract issued by an insurer or
4 licensee.

5 "Licensee" means any entity licensed under and governed by
6 chapter 431, including but not limited to mutual benefit
7 societies governed by chapter 432, fraternal benefit societies
8 governed by chapter 432, and health maintenance organizations
9 governed by chapter 432D, and their respective agents and
10 employees engaged in the business of the licensee.

11 "Person" means any individual, company, association,
12 organization, group, partnership, business, trust, or
13 corporation, but shall not include an insurer as defined in
14 section 431:1-202 or a licensee as defined in this section.

15 **§431:2-B Insurance fraud investigations branch. (a)**

16 There is established in the insurance division the insurance
17 fraud investigations branch.

18 (b) The branch shall:

19 (1) Conduct a statewide program for the prevention of
20 insurance fraud relating but not limited to, title 24



1 and chapter 386, including but not limited to workers'
2 compensation fraud related to self-insured employers;

3 (2) Notwithstanding any other law to the contrary,
4 investigate and prosecute in administrative hearings
5 and courts of competent jurisdiction all persons or
6 insurers involved in insurance fraud violations
7 arising out of, but not limited to chapters 386, 431,
8 432, and 432D; and

9 (3) Promote public and industry-wide education about
10 insurance fraud.

11 (c) The branch may review and take appropriate action on
12 complaints relating to insurance fraud.

13 (d) The commissioner shall employ or retain, by contract
14 or otherwise, attorneys, investigators, investigator assistants,
15 auditors, accountants, physicians, health care professionals,
16 paralegals, consultants, experts, and other professional,
17 technical, and support staff as necessary to promote the
18 effective and efficient conduct of the branch's activities. The
19 commissioner may hire these employees without regard to chapter
20 76.



1 (e) Notwithstanding any other law to the contrary, an
2 attorney employed or retained by the branch may represent the
3 State in any criminal, civil, or administrative proceeding to
4 enforce all applicable state laws relating to insurance fraud,
5 including but not limited to criminal prosecutions, disciplinary
6 actions, and actions for declaratory and injunctive relief.

7 Each attorney representing the State in such a proceeding shall
8 be designated by the attorney general as a special deputy
9 attorney general. The decision to designate an attorney as a
10 special deputy attorney general shall be solely within the
11 discretion of the attorney general.

12 (f) Investigators, investigator assistants, and auditors
13 appointed and commissioned under this part shall have and may
14 exercise all of the powers and authority of a police officer or
15 of a deputy sheriff.

16 (g) Funding for the insurance fraud investigations branch
17 shall come from the compliance resolution fund established
18 pursuant to section 26-9(o).

19 **§431:2-C Insurance fraud.** (a) Any person commits the
20 offense of insurance fraud if the person intentionally or
21 knowingly misrepresents or conceals material facts, opinions,



1 intention, or law to obtain or attempt to obtain coverage,
2 benefits, recovery, or compensation for services provided in the
3 following situations or circumstances:

4 (1) When presenting, or causing or permitting to be
5 presented, an application, whether written, typed, or
6 transmitted through electronic media, for the issuance
7 or renewal of an insurance policy or reinsurance
8 contract;

9 (2) When presenting, or causing or permitting to be
10 presented, false information on a claim for payment
11 whether typed, written, or transmitted through
12 electronic media;

13 (3) When presenting, or causing or permitting to be
14 presented, a claim for the payment of a loss;

15 (4) When presenting, or causing or permitting to be
16 presented, improper multiple duplicative claims for
17 the same loss or injury, including knowingly
18 presenting those multiple and duplicative claims to
19 more than one insurer;



- 1 (5) When presenting, or causing or permitting to be
2 presented, any claim for payment of a health care
3 benefit;
- 4 (6) When presenting, or causing or permitting to be
5 presented, a claim for a health care benefit that was
6 not used by, or provided on behalf of, the claimant;
- 7 (7) When presenting, or causing or permitting to be
8 presented, improper multiple and duplicative claims
9 for payment of the same health care benefit;
- 10 (8) When presenting, or causing or permitting to be
11 presented, for payment any undercharges for benefits
12 on behalf of a specific claimant, unless any known
13 overcharges for benefits under this article for that
14 claimant are presented for reconciliation at the same
15 time;
- 16 (9) When fabricating, altering, concealing, making an
17 entry in, or destroying a document whether typed,
18 written, or through an audiotape or videotape or
19 electronic media;
- 20 (10) When presenting, or causing or permitting to be
21 presented, to a person, insurer, or licensee false,



- 1 incomplete, or misleading information to obtain
2 coverage or payment otherwise available under an
3 insurance policy;
- 4 (11) When presenting, or causing or permitting to be
5 presented, to a person or producer information about a
6 person's status as a licensed producer that induces a
7 person or insurer to purchase an insurance policy or
8 reinsurance contract;
- 9 (12) When making, or causing or permitting to be made, any
10 statements, either typed, written, or through
11 audiotape or videotape or electronic media, or claims
12 by the person or on behalf of a person with regard to
13 obtaining legal recovery or benefits;
- 14 (13) In addition, any person commits the offense of
15 insurance fraud:
- 16 (A) If the person intentionally or knowingly aids,
17 agrees, or attempts to aid, solicit, or conspire
18 with any person who engages in an unlawful act as
19 defined under this section; or
- 20 (B) Intentionally or knowingly makes, causes, or
21 permits to be presented any false statements or



1 claims by any person or on behalf of any person
2 during an official proceeding as defined by
3 section 710-1000.

4 (b) Where the person acting with the intent to defraud
5 under subsection (a) possessed actual knowledge or acted in
6 deliberate ignorance of the truth or falsity of the
7 misrepresentation or concealment of the material opinion,
8 intention, or law, insurance fraud is a:

9 (1) Class B felony if the value of the benefits, recovery,
10 or compensation obtained or attempted to be obtained
11 is more than \$20,000;

12 (2) Class C felony if the value of the benefits, recovery,
13 or compensation obtained or attempted to be obtained
14 is more than \$300 but not more than \$20,000; or

15 (3) Misdemeanor if the value of the benefits, recovery, or
16 compensation obtained or attempted to be obtained is
17 \$300 or less.

18 (c) This section shall not supersede any other law
19 relating to theft, fraud, or deception. Insurance fraud may be
20 prosecuted under this part or any other applicable statute or
21 common law, and all such remedies shall be cumulative.



1 (d) For the purposes of this section, "intentionally" and
2 "knowingly" have the meanings given in section 702-206.

3 **§431:2-D Restitution.** Where the ability to make
4 restitution can be demonstrated, any person convicted under this
5 part shall be ordered by a court to make restitution to any
6 insurer, any licensee, or any other person for any financial
7 loss sustained by the insurer or that other person caused by the
8 act or acts for which the person was convicted.

9 **§431:2-E Insurance fraud; administrative penalties.** (a)
10 In addition to or in lieu of criminal penalties under section
11 431:2-C(b), any person who commits insurance fraud as defined
12 under section 431:2-C, may be subject to the administrative
13 penalties of this section.

14 (b) If a person is found to have knowingly committed
15 insurance fraud under title 24, the commissioner may assess a
16 penalty including one or more of the following:

17 (1) Restitution to any insurer or any other person of
18 benefits or payments fraudulently received or other
19 damages or costs incurred;

20 (2) A fine of not more than \$10,000 for each violation;
21 and



1 (3) Reimbursement of attorneys' fees and costs of the
2 party sustaining a loss under this part, except that
3 the State shall be exempt from paying attorneys' fees
4 and costs to other parties.

5 (c) Administrative actions brought for insurance fraud
6 under this part shall be brought within six years after the
7 insurance fraud is discovered or by exercise of reasonable
8 diligence should have been discovered and, in any event, no more
9 than ten years after the date on which a violation of this part
10 is committed.

11 (d) For the purposes of this section, "knowingly" means
12 that a person has actual knowledge of the facts; and

13 (1) Acts in deliberate ignorance of the truth or falsity
14 of the facts; or

15 (2) Acts in reckless disregard of the truth or falsity of
16 the facts.

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

19 **§431:2-F Administrative procedures.** (a) An
20 administrative penalty may be imposed based upon a judgment by a



1 court of competent jurisdiction or upon an order by the
2 commissioner.

3 (b) The commissioner shall hold a hearing in accordance
4 with chapter 91, prior to imposition of any administrative
5 remedy.

6 **§431:2-G Acceptance of payment.** A provider's failure to
7 dispute a reduced payment by an insurer shall not constitute an
8 implied admission that a fraudulent billing had been submitted.

9 **§431:2-H Civil cause of action for insurance fraud;**
10 **exemption.** (a) An insurer or licensee shall have a civil cause
11 of action to recover payments or benefits from any person who
12 has violated any practice prohibited by section 431:2-C. No
13 recovery shall be allowed if the person has made restitution
14 under section 431:2-D or 431:2-E(b)(1).

15 (b) A person, insurer, or licensee, including an insurer
16 or licensee's adjusters, bill reviewers, producers,
17 representatives, or common-law agents, if acting without malice,
18 shall not be subject to civil liability for providing
19 information, including filing a report, furnishing oral,
20 written, audiotaped, videotaped, or electronic media evidence,



1 providing documents, or giving testimony concerning suspected,
2 anticipated, or completed insurance fraud to:

- 3 (1) A court;
- 4 (2) The commissioner;
- 5 (3) The insurance fraud investigations branch;
- 6 (4) The National Association of Insurance Commissioners;
- 7 (5) The National Insurance Crime Bureau;
- 8 (6) Any federal, state, or county law enforcement or
9 regulatory agency; or
- 10 (7) Another insurer or licensee,

11 if the information is provided for the purpose of preventing,
12 investigating, or prosecuting insurance fraud, except if the
13 person commits perjury.

14 (c) Civil actions brought for insurance fraud under this
15 part shall be brought within six years after the insurance fraud
16 is discovered or by exercise of reasonable diligence should have
17 been discovered and, in any event, no more than ten years after
18 the date on which a violation of this part is committed.

19 **§431:2-I Application notification.** (a) All applications,
20 for insurance under title 24, and all claim forms prepared by an
21 insurer, regardless of the means of transmission, shall contain,



1 or have attached to them, the following or a substantially
2 similar statement, in a prominent location and typeface as
3 determined by the insurer: "For your protection, Hawaii law
4 requires you to be informed that presenting a fraudulent
5 application for insurance or a fraudulent claim for payment of a
6 loss or benefit is a crime punishable by fines or imprisonment,
7 or both." The absence of such a warning in any application or
8 claim form shall not constitute a defense to a charge of
9 insurance fraud under this part or a civil cause of action under
10 section 431:2-H.

11 (b) The commissioner may waive the notice requirement in
12 subsection (a) and prescribe an alternative form of notice when
13 this requirement conflicts with other laws or results in
14 administrative inefficiencies or hardships.

15 **§431:2-J Mandatory reporting.** (a) Within sixty days of
16 an insurer or licensee's employee or agent discovering credible
17 information indicating that a violation of section 431:2-C is
18 occurring or has occurred or as soon thereafter as practicable,
19 the insurer shall provide to the branch information, including
20 documents and other evidence, regarding the alleged violation of
21 section 431:2-C.



1 (b) Information provided pursuant to this section shall be
2 protected from public disclosure to the extent authorized by
3 chapter 92F and section 431:2-209; provided that the branch may
4 release the information in an administrative or judicial
5 proceeding to enforce this part, to federal, state, or county
6 law enforcement or regulatory authorities, to the National
7 Association of Insurance Commissioners, to the National
8 Insurance Crime Bureau, or to an insurer or licensee aggrieved
9 by the alleged violation of section 431:2-C.

10 **§431:2-K Deposit into the compliance resolution fund.** All
11 moneys that have been recovered by the department of commerce
12 and consumer affairs as a result of prosecuting insurance fraud
13 violations pursuant to this part, including civil fines,
14 criminal fines, administrative fines, and settlements, except
15 for restitution made pursuant to section 431:2-D, 431:2-E(b)(1),
16 or 431:2-H, shall be deposited into the compliance resolution
17 fund established pursuant to section 26-9(o)."

18 SECTION 3. Section 386-98, Hawaii Revised Statutes, is
19 amended by amending subsections (e) and (f) to read as follows:

20 "(e) In lieu of or in addition to the criminal penalties
21 set forth in subsection (d), any person who violates subsections



1 (a) and (b) may be subject to the administrative penalties of
2 restitution of benefits or payments fraudulently received under
3 this chapter, whether received from an employer, insurer, or the
4 special compensation fund, to be made to the source from which
5 the compensation was received, and one or more of the following:

- 6 (1) A fine of not more than \$10,000 for each violation;
- 7 (2) Suspension or termination of benefits in whole or in
8 part;
- 9 (3) Suspension or disqualification from providing medical
10 care or services, vocational rehabilitation services,
11 and all other services rendered for payment under this
12 chapter;
- 13 (4) Suspension or termination of payments for medical,
14 vocational rehabilitation and all other services
15 rendered under this chapter;
- 16 (5) Recoupment by the insurer of all payments made for
17 medical care, medical services, vocational
18 rehabilitation services, and all other services
19 rendered for payment under this chapter; or
- 20 (6) Reimbursement of attorney's fees and costs of the
21 party or parties defrauded.



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

12 The insurance fraud investigations branch of the department
13 of commerce and consumer affairs may initiate investigations,
14 prosecutions, and disciplinary actions to enforce this section,
15 including but not limited to workers' compensation fraud
16 relating to self-insured employers."

17 SECTION 4. Section 431:2-203, Hawaii Revised Statutes, is
18 amended by amending subsection (b) to read as follows:

19 "(b) (1) A person who intentionally or knowingly violates,
20 intentionally or knowingly permits any person over
21 whom the person has authority to violate, or



1 intentionally or knowingly aids any person in
2 violating any insurance rule or statute of this State
3 or any effective order issued by the commissioner,
4 shall be subject to any penalty or fine as [~~stated in~~
5 provided by this code or the Hawaii penal code [~~of the~~
6 ~~Hawaii Revised Statutes~~].

7 (2) If the commissioner has cause to believe that any
8 person has violated any penal provision of this code
9 or of other laws relating to insurance, the
10 commissioner may proceed against that person or shall
11 certify the facts of the violation to the public
12 prosecutor of the jurisdiction in which the offense
13 was committed.

14 (3) Violation of any provision of this code is punishable
15 by a fine of not less than \$100 nor more than \$10,000
16 per violation, or by imprisonment for not more than
17 one year, or both, in addition to any other penalty or
18 forfeiture provided herein or otherwise by law.

19 (4) The terms "intentionally" and "knowingly" have the
20 meanings given in section 702-206(1) and (2)."



1 SECTION 5. Section 431:2-204, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:

3 "(d) When the commissioner, through the insurance fraud
4 investigations [~~unit,~~] branch, is conducting an investigation of
5 possible violations of [~~section 431:10C-307.7,~~] part , the
6 commissioner shall pay to a financial institution that is served
7 a subpoena issued under this section a fee for reimbursement of
8 such costs as are necessary and which have been directly
9 incurred in searching for, reproducing, or transporting books,
10 papers, documents, or other objects designated by the subpoena.
11 Reimbursement shall be paid at a rate not to exceed the rate set
12 forth in section 28-2.5(d)."

13 SECTION 6. Section 432:2-102, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 "(b) Nothing in this article shall exempt fraternal
16 benefit societies from the provisions and requirements of
17 part of article 2 of chapter 431 and section 431:2-215."

18 SECTION 7. Section 431:10A-131, Hawaii Revised Statutes,
19 is repealed.

20 [~~"{§431:10A-131} Insurance fraud, penalties. (a) A~~
21 ~~person commits the offense of insurance fraud if the person acts~~



1 ~~or omits to act with intent to obtain benefits or recovery or~~
2 ~~compensation for services provided, or provides legal assistance~~
3 ~~or counsel with intent to obtain benefits or recovery, through~~
4 ~~the following means:~~

5 ~~(1) Knowingly presenting, or causing or permitting to be~~
6 ~~presented, with the intent to defraud, any false~~
7 ~~information on a claim;~~

8 ~~(2) Knowingly presenting, or causing or permitting to be~~
9 ~~presented, any false claim for the payment of a loss;~~

10 ~~(3) Knowingly presenting, or causing or permitting to be~~
11 ~~presented, multiple claims for the same loss or~~
12 ~~injury, including presenting multiple claims to more~~
13 ~~than one insurer, except when these multiple claims~~
14 ~~are appropriate;~~

15 ~~(4) Knowingly making, or causing or permitting to be made,~~
16 ~~any false claim for payment of a health care benefit;~~

17 ~~(5) Knowingly submitting, or causing or permitting to be~~
18 ~~submitted, a claim for a health care benefit that was~~
19 ~~not used by, or provided on behalf of, the claimant;~~

20 ~~(6) Knowingly presenting, or causing or permitting to be~~
21 ~~presented, multiple claims for payment of the same~~



1 ~~health care benefit except when these multiple claims~~
2 ~~are appropriate;~~

3 ~~(7) Knowingly presenting, or causing or permitting to be~~
4 ~~presented, for payment any undercharges for benefits~~
5 ~~on behalf of a specific claimant unless any known~~
6 ~~overcharges for benefits under this article for that~~
7 ~~claimant are presented for reconciliation at the same~~
8 ~~time;~~

9 ~~(8) Aiding, or agreeing or attempting to aid, soliciting,~~
10 ~~or conspiring with any person who engages in an~~
11 ~~unlawful act as defined under this section; or~~

12 ~~(9) Knowingly making, or causing or permitting to be made,~~
13 ~~any false statements or claims by, or on behalf of,~~
14 ~~any person or persons during an official proceeding as~~
15 ~~defined by section 710 1000.~~

16 ~~(b) Violation of subsection (a) is a criminal offense and~~
17 ~~shall constitute a:~~

18 ~~(1) Class B felony if the value of the benefits, recovery,~~
19 ~~or compensation obtained or attempted to be obtained~~
20 ~~is more than \$20,000;~~



1 ~~(2) Class C felony if the value of the benefits, recovery,~~
2 ~~or compensation obtained or attempted to be obtained~~
3 ~~is more than \$300; or~~

4 ~~(3) Misdemeanor if the value of the benefits, recovery, or~~
5 ~~compensation obtained or attempted to be obtained is~~
6 ~~\$300 or less.~~

7 ~~(c) Where the ability to make restitution can be~~
8 ~~demonstrated, any person convicted under this section shall be~~
9 ~~ordered by a court to make restitution to an insurer or any~~
10 ~~other person for any financial loss sustained by the insurer or~~
11 ~~other person caused by the act or acts for which the person was~~
12 ~~convicted.~~

13 ~~(d) A person, if acting without malice, shall not be~~
14 ~~subject to civil liability for providing information, including~~
15 ~~filing a report, furnishing oral or written evidence, providing~~
16 ~~documents, or giving testimony concerning suspected,~~
17 ~~anticipated, or completed public or private insurance fraud to a~~
18 ~~court, the commissioner, the insurance fraud investigations~~
19 ~~unit, the National Association of Insurance Commissioners, any~~
20 ~~federal, state, or county law enforcement or regulatory agency,~~
21 ~~or another insurer if the information is provided only for the~~



1 ~~purpose of preventing, investigating, or prosecuting insurance~~
2 ~~fraud, except if the person commits perjury.~~

3 ~~(e) This section shall not supersede any other law~~
4 ~~relating to theft, fraud, or deception. Insurance fraud may be~~
5 ~~prosecuted under this section, or any other applicable section,~~
6 ~~and may be enjoined by a court of competent jurisdiction.~~

7 ~~(f) An insurer shall have a civil cause of action to~~
8 ~~recover payments or benefits from any person who has~~
9 ~~intentionally obtained payments or benefits in violation of this~~
10 ~~section; provided that no recovery shall be allowed if the~~
11 ~~person has made restitution under subsection (c)."]~~

12 SECTION 8. Section 431:10C-307.7, Hawaii Revised Statutes,
13 is repealed.

14 [~~§431:10C-307.7 Insurance fraud; penalties.~~ (a) A
15 ~~person commits the offense of insurance fraud if the person acts~~
16 ~~or omits to act with intent to obtain benefits or recovery or~~
17 ~~compensation for services provided, or provides legal assistance~~
18 ~~or counsel with intent to obtain benefits or recovery, through~~
19 ~~the following means:~~

20 ~~(1) Knowingly presenting, or causing or permitting to be~~
21 ~~presented, any false information on a claim;~~



- 1 ~~(2) Knowingly presenting, or causing or permitting to be~~
2 ~~presented, any false claim for the payment of a loss;~~
- 3 ~~(3) Knowingly presenting, or causing or permitting to be~~
4 ~~presented, multiple claims for the same loss or~~
5 ~~injury, including presenting multiple claims to more~~
6 ~~than one insurer, except when these multiple claims~~
7 ~~are appropriate;~~
- 8 ~~(4) Knowingly making, or causing or permitting to be made,~~
9 ~~any false claim for payment of a health care benefit;~~
- 10 ~~(5) Knowingly submitting, or causing or permitting to be~~
11 ~~submitted, a claim for a health care benefit that was~~
12 ~~not used by, or provided on behalf of, the claimant;~~
- 13 ~~(6) Knowingly presenting, or causing or permitting to be~~
14 ~~presented, multiple claims for payment of the same~~
15 ~~health care benefit except when these multiple claims~~
16 ~~are appropriate;~~
- 17 ~~(7) Knowingly presenting, or causing or permitting to be~~
18 ~~presented, for payment any undercharges for benefits~~
19 ~~on behalf of a specific claimant unless any known~~
20 ~~overcharges for benefits under this article for that~~



1 ~~claimant are presented for reconciliation at the same~~
2 ~~time;~~

3 ~~(8) Aiding, or agreeing or attempting to aid, soliciting,~~
4 ~~or conspiring with any person who engages in an~~
5 ~~unlawful act as defined under this section; or~~

6 ~~(9) Knowingly making, or causing or permitting to be made,~~
7 ~~any false statements or claims by, or on behalf of,~~
8 ~~any person or persons during an official proceeding as~~
9 ~~defined by section 710 1000.~~

10 ~~(b) Violation of subsection (a) is a criminal offense and~~
11 ~~shall constitute a:~~

12 ~~(1) Class B felony if the value of the benefits, recovery,~~
13 ~~or compensation obtained or attempted to be obtained~~
14 ~~is more than \$20,000;~~

15 ~~(2) Class C felony if the value of the benefits, recovery,~~
16 ~~or compensation obtained or attempted to be obtained~~
17 ~~is more than \$300; or~~

18 ~~(3) Misdemeanor if the value of the benefits, recovery, or~~
19 ~~compensation obtained or attempted to be obtained is~~
20 ~~\$300 or less.~~



1 ~~(c) Where the ability to make restitution can be~~
2 ~~demonstrated, any person convicted under this section shall be~~
3 ~~ordered by a court to make restitution to an insurer or any~~
4 ~~other person for any financial loss sustained by the insurer or~~
5 ~~other person caused by the act or acts for which the person was~~
6 ~~convicted.~~

7 ~~(d) A person, if acting without malice, shall not be~~
8 ~~subject to civil liability for providing information, including~~
9 ~~filing a report, furnishing oral or written evidence, or giving~~
10 ~~testimony concerning suspected, anticipated, or completed~~
11 ~~insurance fraud to a court, the commissioner, the insurance~~
12 ~~fraud investigations unit, the National Association of Insurance~~
13 ~~Commissioners, any federal, state, or county law enforcement or~~
14 ~~regulatory agency, or another insurer if the information is~~
15 ~~provided only for the purpose of preventing, investigating, or~~
16 ~~prosecuting insurance fraud, except if the person commits~~
17 ~~perjury.~~

18 ~~(e) This section shall not supersede any other law~~
19 ~~relating to theft, fraud, or deception. Insurance fraud may be~~
20 ~~prosecuted under this section, or any other applicable section,~~
21 ~~and may be enjoined by a court of competent jurisdiction.~~



1 ~~(f) An insurer shall have a civil cause of action to~~
2 ~~recover payments or benefits from any person who has~~
3 ~~intentionally obtained payments or benefits in violation of this~~
4 ~~section; provided that no recovery shall be allowed if the~~
5 ~~person has made restitution under subsection (c).~~

6 ~~(g) All applications for insurance under this article and~~
7 ~~all claim forms provided and required by an insurer, regardless~~
8 ~~of the means of transmission, shall contain, or have attached to~~
9 ~~them, the following or a substantially similar statement, in a~~
10 ~~prominent location and typeface as determined by the insurer:~~
11 ~~"For your protection, Hawaii law requires you to be informed~~
12 ~~that presenting a fraudulent claim for payment of a loss or~~
13 ~~benefit is a crime punishable by fines or imprisonment, or~~
14 ~~both." The absence of such a warning in any application or~~
15 ~~claim form shall not constitute a defense to a charge of~~
16 ~~insurance fraud under this section.~~

17 ~~(h) An insurer, or the insurer's employee or agent, having~~
18 ~~determined that there is reason to believe that a claim is being~~
19 ~~made in violation of this section, shall provide to the~~
20 ~~insurance fraud investigations unit within sixty days of that~~
21 ~~determination, information, including documents and other~~



1 ~~evidence, regarding the claim in the form and manner prescribed~~
2 ~~by the unit. Information provided pursuant to this subsection~~
3 ~~shall be protected from public disclosure to the extent~~
4 ~~authorized by chapter 92F and section 431:2-209; provided that~~
5 ~~the unit may release the information in an administrative or~~
6 ~~judicial proceeding to enforce this section, to a federal,~~
7 ~~state, or local law enforcement or regulatory authority, to the~~
8 ~~National Association of Insurance Commissioners, or to an~~
9 ~~insurer aggrieved by the claim reasonably believed to violate~~
10 ~~this section."]~~

11 SECTION 9. Section 431:10C-307.8, Hawaii Revised Statutes,
12 is repealed.

13 ["~~§431:10C-307.8 Insurance fraud investigations unit.~~ (a)
14 ~~There is established in the insurance division an insurance~~
15 ~~fraud investigations unit.~~

16 ~~(b) The unit shall employ attorneys, investigators,~~
17 ~~investigator assistants, and other support staff as necessary to~~
18 ~~promote the effective and efficient conduct of the unit's~~
19 ~~activities. Notwithstanding any other law to the contrary, the~~
20 ~~attorneys may represent the State in any judicial or~~
21 ~~administrative proceeding to enforce all applicable state laws~~



1 ~~relating to insurance fraud, including but not limited to~~
2 ~~criminal prosecutions and actions for declaratory and injunctive~~
3 ~~relief. Investigators may serve process and apply for and~~
4 ~~execute search warrants pursuant to chapter 803 and the rules of~~
5 ~~court but shall not otherwise have the powers of a police~~
6 ~~officer or deputy sheriff. The commissioner may hire such~~
7 ~~employees not subject to chapter 76.~~

8 ~~(c) The purpose of the insurance fraud investigations unit~~
9 ~~shall be to conduct a statewide program for the prevention,~~
10 ~~investigation, and prosecution of insurance fraud cases and~~
11 ~~violations of all applicable state laws relating to insurance~~
12 ~~fraud. The insurance fraud investigations unit may also review~~
13 ~~and take appropriate action on complaints relating to insurance~~
14 ~~fraud.~~

15 ~~(d) Funding for the insurance fraud investigations unit~~
16 ~~shall come from the motor vehicle insurance administration~~
17 ~~revolving fund."]~~

18 SECTION 10. Section 432:1-106, Hawaii Revised Statutes, is
19 repealed.

20 ["~~§432:1-106~~ ~~Insurance fraud; penalties.~~ (a) A person
21 ~~commits the offense of insurance fraud if the person acts or~~



1 ~~omits to act with intent to obtain benefits or recovery or~~
2 ~~compensation for services provided, or provides legal assistance~~
3 ~~or counsel with intent to obtain benefits or recovery, through~~
4 ~~the following means:~~

5 ~~(1) Knowingly presenting, or causing or permitting to be~~
6 ~~presented, with the intent to defraud, any false~~
7 ~~information on a claim;~~

8 ~~(2) Knowingly presenting, or causing or permitting to be~~
9 ~~presented, any false claim for the payment of a loss;~~

10 ~~(3) Knowingly presenting, or causing or permitting to be~~
11 ~~presented, multiple claims for the same loss or~~
12 ~~injury, including presenting multiple claims to more~~
13 ~~than one insurer, except when these multiple claims~~
14 ~~are appropriate;~~

15 ~~(4) Knowingly making, or causing or permitting to be made,~~
16 ~~any false claim for payment of a health care benefit;~~

17 ~~(5) Knowingly submitting, or causing or permitting to be~~
18 ~~submitted, a claim for a health care benefit that was~~
19 ~~not used by, or provided on behalf of, the claimant;~~

20 ~~(6) Knowingly presenting, or causing or permitting to be~~
21 ~~presented, multiple claims for payment of the same~~



1 ~~health care benefit except when these multiple claims~~
2 ~~are appropriate;~~

3 ~~(7) Knowingly presenting, or causing or permitting to be~~
4 ~~presented, for payment any undercharges for benefits~~
5 ~~on behalf of a specific claimant unless any known~~
6 ~~overcharges for benefits under this article for that~~
7 ~~claimant are presented for reconciliation at the same~~
8 ~~time;~~

9 ~~(8) Aiding, or agreeing or attempting to aid, soliciting,~~
10 ~~or conspiring with any person who engages in an~~
11 ~~unlawful act as defined under this section; or~~

12 ~~(9) Knowingly making, or causing or permitting to be made,~~
13 ~~any false statements or claims by, or on behalf of,~~
14 ~~any person or persons during an official proceeding as~~
15 ~~defined by section 710 1000.~~

16 ~~(b) Violation of subsection (a) is a criminal offense and~~
17 ~~shall constitute a:~~

18 ~~(1) Class B felony if the value of the benefits, recovery,~~
19 ~~or compensation obtained or attempted to be obtained~~
20 ~~is more than \$20,000;~~



1 ~~(2) Class C felony if the value of the benefits, recovery,~~
2 ~~or compensation obtained or attempted to be obtained~~
3 ~~is more than \$300; or~~

4 ~~(3) Misdemeanor if the value of the benefits, recovery, or~~
5 ~~compensation obtained or attempted to be obtained is~~
6 ~~\$300 or less.~~

7 ~~(c) Where the ability to make restitution can be~~
8 ~~demonstrated, any person convicted under this section shall be~~
9 ~~ordered by a court to make restitution to an insurer or any~~
10 ~~other person for any financial loss sustained by the insurer or~~
11 ~~other person caused by the act or acts for which the person was~~
12 ~~convicted.~~

13 ~~(d) A person, if acting without malice, shall not be~~
14 ~~subject to civil liability for providing information, including~~
15 ~~filing a report, furnishing oral or written evidence, providing~~
16 ~~documents, or giving testimony concerning suspected,~~
17 ~~anticipated, or completed public or private insurance fraud to a~~
18 ~~court, the commissioner, the insurance fraud investigations~~
19 ~~unit, the National Association of Insurance Commissioners, any~~
20 ~~federal, state, or county law enforcement or regulatory agency,~~
21 ~~or another insurer if the information is provided only for the~~



1 ~~purpose of preventing, investigating, or prosecuting insurance~~
2 ~~fraud, except if the person commits perjury.~~

3 ~~(e) This section shall not supersede any other law~~
4 ~~relating to theft, fraud, or deception. Insurance fraud may be~~
5 ~~prosecuted under this section, or any other applicable section,~~
6 ~~and may be enjoined by a court of competent jurisdiction.~~

7 ~~(f) An insurer shall have a civil cause of action to~~
8 ~~recover payments or benefits from any person who has~~
9 ~~intentionally obtained payments or benefits in violation of this~~
10 ~~section; provided that no recovery shall be allowed if the~~
11 ~~person has made restitution under subsection (c)."]~~

12 SECTION 11. Section 432D:18.5, Hawaii Revised Statutes, is
13 repealed.

14 [~~["§432D-18.5] Insurance fraud; penalties.~~ (a) A person
15 ~~commits the offense of insurance fraud if the person acts or~~
16 ~~omits to act with intent to obtain benefits or recovery or~~
17 ~~compensation for services provided, or provides legal assistance~~
18 ~~or counsel with intent to obtain benefits or recovery, through~~
19 ~~the following means:~~



- 1 ~~(1) Knowingly presenting, or causing or permitting to be~~
2 ~~presented, with the intent to defraud, any false~~
3 ~~information on a claim;~~
- 4 ~~(2) Knowingly presenting, or causing or permitting to be~~
5 ~~presented, any false claim for the payment of a loss;~~
- 6 ~~(3) Knowingly presenting, or causing or permitting to be~~
7 ~~presented, multiple claims for the same loss or~~
8 ~~injury, including presenting multiple claims to more~~
9 ~~than one insurer, except when these multiple claims~~
10 ~~are appropriate;~~
- 11 ~~(4) Knowingly making, or causing or permitting to be made,~~
12 ~~any false claim for payment of a health care benefit;~~
- 13 ~~(5) Knowingly submitting, or causing or permitting to be~~
14 ~~submitted, a claim for a health care benefit that was~~
15 ~~not used by, or provided on behalf of, the claimant;~~
- 16 ~~(6) Knowingly presenting, or causing or permitting to be~~
17 ~~presented, multiple claims for payment of the same~~
18 ~~health care benefit except when these multiple claims~~
19 ~~are appropriate;~~
- 20 ~~(7) Knowingly presenting, or causing or permitting to be~~
21 ~~presented, for payment any undercharges for benefits~~



1 ~~on behalf of a specific claimant unless any known~~
2 ~~overcharges for benefits under this article for that~~
3 ~~claimant are presented for reconciliation at the same~~
4 ~~time;~~

5 ~~(8) Aiding, or agreeing or attempting to aid, soliciting,~~
6 ~~or conspiring with any person who engages in an~~
7 ~~unlawful act as defined under this section; or~~

8 ~~(9) Knowingly making, or causing or permitting to be made,~~
9 ~~any false statements or claims by, or on behalf of,~~
10 ~~any person or persons during an official proceeding as~~
11 ~~defined by section 710 1000.~~

12 ~~(b) Violation of subsection (a) is a criminal offense and~~
13 ~~shall constitute a:~~

14 ~~(1) Class B felony if the value of the benefits, recovery,~~
15 ~~or compensation obtained or attempted to be obtained~~
16 ~~is more than \$20,000;~~

17 ~~(2) Class C felony if the value of the benefits, recovery,~~
18 ~~or compensation obtained or attempted to be obtained~~
19 ~~is more than \$300; or~~



1 ~~(3) Misdemeanor if the value of the benefits, recovery, or~~
2 ~~compensation obtained or attempted to be obtained is~~
3 ~~\$300 or less.~~

4 ~~(c) Where the ability to make restitution can be~~
5 ~~demonstrated, any person convicted under this section shall be~~
6 ~~ordered by a court to make restitution to an insurer or any~~
7 ~~other person for any financial loss sustained by the insurer or~~
8 ~~other person caused by the act or acts for which the person was~~
9 ~~convicted.~~

10 ~~(d) A person, if acting without malice, shall not be~~
11 ~~subject to civil liability for providing information, including~~
12 ~~filing a report, furnishing oral or written evidence, providing~~
13 ~~documents, or giving testimony concerning suspected,~~
14 ~~anticipated, or completed public or private insurance fraud to a~~
15 ~~court, the commissioner, the insurance fraud investigations~~
16 ~~unit, the National Association of Insurance Commissioners, any~~
17 ~~federal, state, or county law enforcement or regulatory agency,~~
18 ~~or another insurer if the information is provided only for the~~
19 ~~purpose of preventing, investigating, or prosecuting insurance~~
20 ~~fraud, except if the person commits perjury.~~



1 ~~(e) This section shall not supersede any other law~~
2 ~~relating to theft, fraud, or deception. Insurance fraud may be~~
3 ~~prosecuted under this section, or any other applicable section,~~
4 ~~and may be enjoined by a court of competent jurisdiction.~~

5 ~~(f) An insurer shall have a civil cause of action to~~
6 ~~recover payments or benefits from any person who has~~
7 ~~intentionally obtained payments or benefits in violation of this~~
8 ~~section; provided that no recovery shall be allowed if the~~
9 ~~person has made restitution under subsection (c)."]~~

10 SECTION 12. All rights, powers, functions, and duties of
11 the insurance fraud investigations unit are transferred to the
12 insurance fraud investigations branch.

13 All officers and employees whose functions are transferred
14 by this Act shall be transferred with their functions and shall
15 continue to perform their regular duties upon their transfer,
16 subject to the state personnel laws and this Act.

17 No officer or employee of the State having tenure shall
18 suffer any loss of salary, seniority, prior service credit,
19 vacation, sick leave, or other employee benefit or privilege as
20 a consequence of this Act, and such officer or employee may be
21 transferred or appointed to a civil service position without the



1 necessity of examination; provided that the officer or employee
2 possesses the minimum qualifications for the position to which
3 transferred or appointed; and provided that subsequent changes
4 in status may be made pursuant to applicable civil service and
5 compensation laws.

6 An officer or employee of the State who does not have
7 tenure and who may be transferred or appointed to a civil
8 service position as a consequence of this Act shall become a
9 civil service employee without the loss of salary, seniority,
10 prior service credit, vacation, sick leave, or other employee
11 benefits or privileges and without the necessity of examination;
12 provided that the officer or employee possesses the minimum
13 qualifications for the position to which transferred or
14 appointed.

15 If an office or position held by an officer or employee
16 having tenure is abolished, the officer or employee shall not
17 thereby be separated from public employment, but shall remain in
18 the employment of the State with the same pay and classification
19 and shall be transferred to some other office or position for
20 which the officer or employee is eligible under the personnel



1 laws of the State as determined by the head of the department or
2 the governor.

3 SECTION 13. In codifying the new sections added by section
4 2 of this Act, the revisor of statutes shall substitute
5 appropriate section numbers for the letters used in designating
6 the new sections in this Act.

7 SECTION 14. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 15. This Act shall take effect on July 1, 2006.



Report Title:

Insurance Fraud

Description:

Replaces the Insurance Fraud Investigations Unit with the Insurance Fraud Investigations Branch and broadens its authority to the investigation and prosecution of insurance fraud relating to all lines of insurance, including workers' compensation.
(HB2323 HD1)

