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# A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1           SECTION 1. Section 431:13-103, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3           "(a) The following are defined as unfair methods of  
4 competition and unfair or deceptive acts or practices in the  
5 business of insurance:

6           (1) Misrepresentations and false advertising of insurance  
7 policies. Making, issuing, circulating, or causing to  
8 be made, issued, or circulated, any estimate,  
9 illustration, circular, statement, sales presentation,  
10 omission, or comparison which:

11           (A) Misrepresents the benefits, advantages,  
12 conditions, or terms of any insurance policy;

13           (B) Misrepresents the dividends or share of the  
14 surplus to be received on any insurance policy;

15           (C) Makes any false or misleading statement as to the  
16 dividends or share of surplus previously paid on  
17 any insurance policy;



- 1 (D) Is misleading or is a misrepresentation as to the  
2 financial condition of any insurer, or as to the  
3 legal reserve system upon which any life insurer  
4 operates;
- 5 (E) Uses any name or title of any insurance policy or  
6 class of insurance policies misrepresenting the  
7 true nature thereof;
- 8 (F) Is a misrepresentation for the purpose of  
9 inducing or tending to induce the lapse,  
10 forfeiture, exchange, conversion, or surrender of  
11 any insurance policy;
- 12 (G) Is a misrepresentation for the purpose of  
13 effecting a pledge or assignment of or effecting  
14 a loan against any insurance policy;
- 15 (H) Misrepresents any insurance policy as being  
16 shares of stock;
- 17 (I) Publishes or advertises the assets of any insurer  
18 without publishing or advertising with equal  
19 conspicuousness the liabilities of the insurer,  
20 both as shown by its last annual statement; or



- 1 (J) Publishes or advertises the capital of any  
2 insurer without stating specifically the amount  
3 of paid-in and subscribed capital;
- 4 (2) False information and advertising generally. Making,  
5 publishing, disseminating, circulating, or placing  
6 before the public, or causing, directly or indirectly,  
7 to be made, published, disseminated, circulated, or  
8 placed before the public, in a newspaper, magazine, or  
9 other publication, or in the form of a notice,  
10 circular, pamphlet, letter, or poster, or over any  
11 radio or television station, or in any other way, an  
12 advertisement, announcement, or statement containing  
13 any assertion, representation, or statement with  
14 respect to the business of insurance or with respect  
15 to any person in the conduct of the person's insurance  
16 business, which is untrue, deceptive, or misleading;
- 17 (3) Defamation. Making, publishing, disseminating, or  
18 circulating, directly or indirectly, or aiding,  
19 abetting, or encouraging the making, publishing,  
20 disseminating, or circulating of any oral or written  
21 statement or any pamphlet, circular, article, or  
22 literature which is false, or maliciously critical of



1 or derogatory to the financial condition of an  
2 insurer, and which is calculated to injure any person  
3 engaged in the business of insurance;

4 (4) Boycott, coercion, and intimidation.

5 (A) Entering into any agreement to commit, or by any  
6 action committing, any act of boycott, coercion,  
7 or intimidation resulting in or tending to result  
8 in unreasonable restraint of, or monopoly in, the  
9 business of insurance; or

10 (B) Entering into any agreement on the condition,  
11 agreement, or understanding that a policy will  
12 not be issued or renewed unless the prospective  
13 insured contracts for another class or an  
14 additional policy of the same class of insurance  
15 with the same insurer;

16 (5) False financial statements.

17 (A) Knowingly filing with any supervisory or other  
18 public official, or knowingly making, publishing,  
19 disseminating, circulating, or delivering to any  
20 person, or placing before the public, or  
21 knowingly causing, directly or indirectly, to be  
22 made, published, disseminated, circulated,



1 delivered to any person, or placed before the  
2 public, any false statement of a material fact as  
3 to the financial condition of an insurer; or  
4 (B) Knowingly making any false entry of a material  
5 fact in any book, report, or statement of any  
6 insurer with intent to deceive any agent or  
7 examiner lawfully appointed to examine into its  
8 condition or into any of its affairs, or any  
9 public official to whom the insurer is required  
10 by law to report, or who has authority by law to  
11 examine into its condition or into any of its  
12 affairs, or, with like intent, knowingly omitting  
13 to make a true entry of any material fact  
14 pertaining to the business of the insurer in any  
15 book, report, or statement of the insurer;  
16 (6) Stock operations and advisory board contracts.  
17 Issuing or delivering or permitting agents, officers,  
18 or employees to issue or deliver, agency company stock  
19 or other capital stock, or benefit certificates or  
20 shares in any common-law corporation, or securities or  
21 any special or advisory board contracts or other



1 contracts of any kind promising returns and profits as  
2 an inducement to insurance;

3 (7) Unfair discrimination.

4 (A) Making or permitting any unfair discrimination  
5 between individuals of the same class and equal  
6 expectation of life in the rates charged for any  
7 contract of life insurance or of life annuity or  
8 in the dividends or other benefits payable  
9 thereon, or in any other of the terms and  
10 conditions of the contract;

11 (B) Making or permitting any unfair discrimination in  
12 favor of particular individuals or persons, or  
13 between insureds or subjects of insurance having  
14 substantially like insuring, risk, and exposure  
15 factors, or expense elements, in the terms or  
16 conditions of any insurance contract, or in the  
17 rate or amount of premium charge therefor, or in  
18 the benefits payable or in any other rights or  
19 privilege accruing thereunder;

20 (C) Making or permitting any unfair discrimination  
21 between individuals or risks of the same class  
22 and of essentially the same hazards by refusing



1 to issue, refusing to renew, canceling, or  
2 limiting the amount of insurance coverage on a  
3 property or casualty risk because of the  
4 geographic location of the risk, unless:  
5 (i) The refusal, cancellation, or limitation is  
6 for a business purpose which is not a mere  
7 pretext for unfair discrimination; or  
8 (ii) The refusal, cancellation, or limitation is  
9 required by law or regulatory mandate;  
10 (D) Making or permitting any unfair discrimination  
11 between individuals or risks of the same class  
12 and of essentially the same hazards by refusing  
13 to issue, refusing to renew, canceling, or  
14 limiting the amount of insurance coverage on a  
15 residential property risk, or the personal  
16 property contained therein, because of the age of  
17 the residential property, unless:  
18 (i) The refusal, cancellation, or limitation is  
19 for a business purpose which is not a mere  
20 pretext for unfair discrimination; or  
21 (ii) The refusal, cancellation, or limitation is  
22 required by law or regulatory mandate;



- 1           (E) Refusing to insure, refusing to continue to  
2           insure, or limiting the amount of coverage  
3           available to an individual because of the sex or  
4           marital status of the individual; however,  
5           nothing in this subsection shall prohibit an  
6           insurer from taking marital status into account  
7           for the purpose of defining persons eligible for  
8           dependent benefits;
  
- 9           (F) Terminating or modifying coverage, or refusing to  
10          issue or renew any property or casualty policy or  
11          contract of insurance solely because the  
12          applicant or insured or any employee of either is  
13          mentally or physically impaired; provided that  
14          this subparagraph shall not apply to accident and  
15          health or sickness insurance sold by a casualty  
16          insurer; provided further that this subparagraph  
17          shall not be interpreted to modify any other  
18          provision of law relating to the termination,  
19          modification, issuance, or renewal of any  
20          insurance policy or contract;
  
- 21          (G) Refusing to insure, refusing to continue to  
22          insure, or limiting the amount of coverage



1 available to an individual based solely upon the  
2 individual's having taken a human  
3 immunodeficiency virus (HIV) test prior to  
4 applying for insurance; or

5 (H) Refusing to insure, refusing to continue to  
6 insure, or limiting the amount of coverage  
7 available to an individual because the individual  
8 refuses to consent to the release of information  
9 which is confidential as provided in section 325-  
10 101; provided that nothing in this subparagraph  
11 shall prohibit an insurer from obtaining and  
12 using the results of a test satisfying the  
13 requirements of the commissioner, which was taken  
14 with the consent of an applicant for insurance;  
15 provided further that any applicant for insurance  
16 who is tested for HIV infection shall be afforded  
17 the opportunity to obtain the test results,  
18 within a reasonable time after being tested, and  
19 that the confidentiality of the test results  
20 shall be maintained as provided by section 325-  
21 101;



1 (8) Rebates. Except as otherwise expressly provided by  
2 law:

3 (A) Knowingly permitting or offering to make or  
4 making any contract of insurance, or agreement as  
5 to the contract other than as plainly expressed  
6 in the contract, or paying or allowing, or giving  
7 or offering to pay, allow, or give, directly or  
8 indirectly, as inducement to the insurance, any  
9 rebate of premiums payable on the contract, or  
10 any special favor or advantage in the dividends  
11 or other benefits, or any valuable consideration  
12 or inducement not specified in the contract; or

13 (B) Giving, selling, or purchasing, or offering to  
14 give, sell, or purchase as inducement to the  
15 insurance or in connection therewith, any stocks,  
16 bonds, or other securities of any insurance  
17 company or other corporation, association, or  
18 partnership, or any dividends or profits accrued  
19 thereon, or anything of value not specified in  
20 the contract;



1           (9) Nothing in paragraph (7) or (8) shall be construed as  
2 including within the definition of discrimination or  
3 rebates any of the following practices:

4           (A) In the case of any contract of life insurance or  
5 life annuity, paying bonuses to policyholders or  
6 otherwise abating their premiums in whole or in  
7 part out of surplus accumulated from  
8 nonparticipating insurance; provided that any  
9 bonus or abatement of premiums shall be fair and  
10 equitable to policyholders and in the best  
11 interests of the insurer and its policyholders;

12           (B) In the case of life insurance policies issued on  
13 the industrial debit plan, making allowance to  
14 policyholders who have continuously for a  
15 specified period made premium payments directly  
16 to an office of the insurer in an amount which  
17 fairly represents the saving in collection  
18 expense;

19           (C) Readjustment of the rate of premium for a group  
20 insurance policy based on the loss or expense  
21 experience thereunder, at the end of the first or  
22 any subsequent policy year of insurance

1                   thereunder, which may be made retroactive only  
2                   for the policy year; and

3                   (D) In the case of any contract of insurance, the  
4                   distribution of savings, earnings, or surplus  
5                   equitably among a class of policyholders, all in  
6                   accordance with this article;

7                   (10) Refusing to provide or limiting coverage available to  
8                   an individual because the individual may have a third-  
9                   party claim for recovery of damages; provided that:

10                   (A) Where damages are recovered by judgment or  
11                   settlement of a third-party claim, reimbursement  
12                   of past benefits paid shall be allowed pursuant  
13                   to section 663-10;

14                   (B) This paragraph shall not apply to entities  
15                   licensed under chapter 386 or 431:10C; and

16                   (C) For entities licensed under chapter 432 or 432D:

17                   (i) It shall not be a violation of this section  
18                   to refuse to provide or limit coverage  
19                   available to an individual because the  
20                   entity determines that the individual  
21                   reasonably appears to have coverage  
22                   available under chapter 386 or 431:10C; and



1 (ii) Payment of claims to an individual who may  
2 have a third-party claim for recovery of  
3 damages may be conditioned upon the  
4 individual first signing and submitting to  
5 the entity documents to secure the lien and  
6 reimbursement rights of the entity and  
7 providing information reasonably related to  
8 the entity's investigation of its liability  
9 for coverage.

10 Any individual who knows or reasonably should  
11 know that the individual may have a third-party  
12 claim for recovery of damages and who fails to  
13 provide timely notice of the potential claim to  
14 the entity, shall be deemed to have waived the  
15 prohibition of this paragraph against refusal or  
16 limitation of coverage. "Third-party claim" for  
17 purposes of this paragraph means any tort claim  
18 for monetary recovery or damages that the  
19 individual has against any person, entity, or  
20 insurer, other than the entity licensed under  
21 chapter 432 or 432D;



- 1           (11) Unfair claim settlement practices. Committing or  
2 performing with such frequency as to indicate a  
3 general business practice any of the following:
- 4           (A) Misrepresenting pertinent facts or insurance  
5 policy provisions relating to coverages at issue;
  - 6           (B) With respect to claims arising under its  
7 policies, failing to respond with reasonable  
8 promptness, in no case more than fifteen working  
9 days, to communications received from:
    - 10           (i) The insurer's policyholder;
    - 11           (ii) Any other persons, including the  
12 commissioner; or
    - 13           (iii) The insurer of a person involved in an  
14 incident in which the insurer's policyholder  
15 is also involved.

16           The response shall be more than an acknowledgment  
17 that [~~such~~] the person's communication has been  
18 received[~~r~~] and shall adequately address the  
19 concerns stated in the communication[~~r~~],  
20 including whether or not the insurer has all the  
21 relevant information needed to evaluate the  
22 claim, what additional information is needed or

1                   what mistakes need to be corrected in order to  
2                   evaluate the claim, and what course of action the  
3                   insurer contemplates next;

4           (C) Failing to adopt and implement reasonable  
5           standards for the prompt investigation of claims  
6           arising under insurance policies;

7           (D) Refusing to pay claims without conducting a  
8           reasonable investigation based upon all available  
9           information;

10          (E) Failing to affirm or deny coverage of claims  
11          within a reasonable time after proof of loss  
12          statements have been completed;

13          (F) Failing to offer payment within thirty calendar  
14          days of affirmation of liability, if the amount  
15          of the claim has been determined and is not in  
16          dispute;

17          (G) Failing to provide the insured, or when  
18          applicable the insured's beneficiary, with a  
19          reasonable written explanation for any delay, on  
20          every claim remaining unresolved for thirty  
21          calendar days from the date it was reported;



- 1 (H) Not attempting in good faith to effectuate
- 2 prompt, fair, and equitable settlements of claims
- 3 in which liability has become reasonably clear;
- 4 (I) Compelling insureds to institute litigation to
- 5 recover amounts due under an insurance policy by
- 6 offering substantially less than the amounts
- 7 ultimately recovered in actions brought by the
- 8 insureds;
- 9 (J) Attempting to settle a claim for less than the
- 10 amount to which a reasonable person would have
- 11 believed the person was entitled by reference to
- 12 written or printed advertising material
- 13 accompanying or made part of an application;
- 14 (K) Attempting to settle claims on the basis of an
- 15 application which was altered without notice,
- 16 knowledge, or consent of the insured;
- 17 (L) Making claims payments to insureds or
- 18 beneficiaries not accompanied by a statement
- 19 setting forth the coverage under which the
- 20 payments are being made;
- 21 (M) Making known to insureds or claimants a policy of
- 22 appealing from arbitration awards in favor of





1 insureds or claimants for the purpose of  
2 compelling them to accept settlements or  
3 compromises less than the amount awarded in  
4 arbitration;

5 (N) Delaying the investigation or payment of claims  
6 by requiring an insured, claimant, or the  
7 physician of either to submit a preliminary claim  
8 report and then requiring the subsequent  
9 submission of formal proof of loss forms, both of  
10 which submissions contain substantially the same  
11 information;

12 (O) Failing to promptly settle claims, where  
13 liability has become reasonably clear, under one  
14 portion of the insurance policy coverage to  
15 influence settlements under other portions of the  
16 insurance policy coverage;

17 (P) Failing to promptly provide a reasonable  
18 explanation of the basis in the insurance policy  
19 in relation to the facts or applicable law for  
20 denial of a claim or for the offer of a  
21 compromise settlement; and



1 (Q) Indicating to the insured on any payment draft,  
2 check, or in any accompanying letter that the  
3 payment is "final" or is "a release" of any claim  
4 if additional benefits relating to the claim are  
5 probable under coverages afforded by the policy;  
6 unless the policy limit has been paid or there is  
7 a bona fide dispute over either the coverage or  
8 the amount payable under the policy;

9 (12) Failure to maintain complaint handling procedures.  
10 Failure of any insurer to maintain a complete record  
11 of all the complaints which it has received since the  
12 date of its last examination under section 431:2-302.  
13 This record shall indicate the total number of  
14 complaints, their classification by line of insurance,  
15 the nature of each complaint, the disposition of these  
16 complaints, and the time it took to process each  
17 complaint. For purposes of this section, "complaint"  
18 means any written communication primarily expressing a  
19 grievance; and

20 (13) Misrepresentation in insurance applications. Making  
21 false or fraudulent statements or representations on  
22 or relative to an application for an insurance policy,

1 for the purpose of obtaining a fee, commission, money,  
 2 or other benefit from any insurer, producer, or  
 3 individual."

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

6 SECTION 3. This Act shall take effect upon its approval.  
 7

INTRODUCED BY:

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H.B. NO. 3248

**Report Title:**  
Ins; Responses

**Description:**

Requires adequate responses from insurance providers to inquiries and claim submissions from insureds.

