

JAN 23 2006

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~~[7]~~ and shall adequately address the
19 concerns stated in the communication~~[7]~~,
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: *Carol Fukunaga*
Raymond



SB2102

Report Title:
Ins; Responses

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

