

S.B. NO. 2206

JAN 25 2006

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

13 Insurance fraud also has increasingly affected costs within
14 the health insurance industry. Industry healthcare fraud losses
15 are estimated to be as much as fourteen per cent of the
16 \$1,200,000,000,000 in annual national healthcare costs. This is
17 equivalent to approximately \$36,000,000,000 to \$144,000,000,000

SB. NO. 2286

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

13 No line of insurance is exempt from insurance fraud. Rather
14 than limit administrative, civil, and criminal penalties for
15 insurance fraud to a few selected lines of insurance, Hawaii's
16 insurance fraud law should be expanded to include all lines of
17 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 purposes of this Act are to:

- 21 (1) Restructure the laws pertaining to the insurance fraud
22 investigations unit and empower that unit to
23 investigate and prosecute insurance fraud in all lines

SB. NO. 2286

1 of insurance located within title 24, Hawaii Revised
2 Statutes;

3 (2) Establish administrative, civil, and criminal penalties
4 for offenses of insurance fraud in all lines of
5 insurance located within title 24, Hawaii Revised
6 Statutes; and

7 (3) Provide that fines and settlements resulting from
8 successful insurance fraud prosecutions are to be
9 deposited into the compliance resolution fund to help
10 the insurance fraud investigations unit cover some of
11 the cost of its own operation to prevent, investigate,
12 and prosecute insurance fraud.

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

16 **"PART . INSURANCE FRAUD**

17 **§431:2-A Definitions.** As used in this part:

18 "Unit" means the insurance fraud investigations unit of the
19 insurance division.

20 "Insurer" shall have the meaning as defined in section
21 431:1-202.

22 "Person" means any individual, company, association,
23 organization, group, partnership, business, trust, or

SB. NO. 2286

1 corporation; but shall exclude insurers as defined in section
2 431:1-202, mutual benefit societies as defined in section 432:1-
3 104, and health maintenance organizations as defined in section
4 432D-1.

5 **§431:2-B Insurance fraud investigations unit.** (a) There
6 is established in the insurance division the insurance fraud
7 investigations unit.

8 (b) The unit shall:

9 (1) Conduct a statewide program for the prevention of
10 insurance fraud relating to title 24;

11 (2) Notwithstanding any other law to the contrary,
12 investigate and prosecute via administrative hearings
13 and criminal and civil courts of competent jurisdiction
14 all persons or insurers involved in insurance fraud
15 violations arising out of but not limited to chapters
16 431, 432, and 432D; and

17 (3) Promote public and industry-wide education about
18 insurance fraud.

19 (c) The unit may review and take appropriate action on
20 complaints relating to insurance fraud.

21 (d) The commissioner shall employ or retain, by contract or
22 otherwise, attorneys, investigators, investigator-auditors,
23 investigator assistants, auditors, accountants, physicians,
24 health care professionals, paralegals, consultants, experts, and

1 other professional, technical, and support staff as necessary to
2 promote the effective and efficient conduct of the unit's
3 activities. The commissioner may hire these employees without
4 regard to chapter 76.

5 (e) Notwithstanding any other law to the contrary, an
6 attorney employed or retained by the unit may represent the State
7 in any criminal, civil, or administrative proceeding to enforce
8 all applicable state laws relating to insurance fraud, including,
9 but not limited to, criminal prosecutions, disciplinary actions,
10 and actions for declaratory and injunctive relief. Each attorney
11 representing the State in such a proceeding shall be designated
12 by the attorney general as a special deputy attorney general.
13 The decision to designate an attorney as a special deputy
14 attorney general shall be solely within the discretion of the
15 attorney general.

16 (f) Investigators, investigator-auditors, investigator
17 assistants, and auditors appointed under this part shall have and
18 may exercise all of the powers and authority of a police officer
19 or of a deputy sheriff.

20 (g) Funding for the insurance fraud investigations unit
21 shall come from the compliance resolution fund established
22 pursuant to section 26-9(o).

23 **§431:2-C Insurance fraud.** (a) A person commits the
24 offense of insurance fraud if the person intentionally or

SB. NO. 2286

1 knowingly in order to obtain or attempt to obtain coverage,
2 benefits, recovery, or compensation for services:

3 (1) Presents or causes or permits to be presented false
4 information on an application, whether written, typed,
5 or transmitted through electronic media, for the
6 issuance or renewal of an insurance policy or
7 reinsurance contract;

8 (2) Presents or causes or permits to be presented false
9 information on a claim for payment whether typed,
10 written, or transmitted through electronic media;

11 (3) Presents or causes or permits to be presented a false
12 claim for the payment of a loss;

13 (4) Presents or causes or permits to be presented multiple
14 duplicative claims for the same loss, injury, or
15 benefit including knowingly presenting such multiple
16 and duplicative claims to more than one insurer;

17 (5) Presents or causes or permits to be presented any false
18 claim for payment of a healthcare benefit;

19 (6) Presents or causes or permits to be presented a claim
20 for a healthcare benefit that was not used by or
21 provided to the claimant;

22 (7) Fabricates, alters, conceals, makes a false entry in,
23 or destroys a document whether typed, written, or

SB. NO. 2286

- 1 through an audio or video tape or electronic media for
2 the purpose of falsely obtaining coverage, benefits,
3 recovery, or compensation for services;
- 4 (8) Presents or causes or permits to be presented to a
5 person or insurer false, incomplete, or misleading
6 information regarding the nature, extent, and terms of
7 an insurance policy, and the benefits under any policy
8 of insurance, whether first or third party, for the
9 purpose of falsely obtaining coverage, benefits,
10 recovery, or compensation for services;
- 11 (9) Presents or causes or permits to be presented to a
12 person or producer false information about a person's
13 status as a licensed producer that induces a person or
14 insurer to purchase an insurance policy or reinsurance
15 contract;
- 16 (10) Makes or causes or permits to be made any false
17 statements, either typed, written, or through audio or
18 video tape or electronic media, or false claims by the
19 person or on behalf of a person with regard to
20 obtaining legal recovery or benefits;
- 21 (b) In addition, a person commits the offense of insurance
22 fraud:

SB. NO. 2286

- 1 (1) If the person intentionally or knowingly aids,
2 agrees, solicits, conspires, or attempts to
3 intentionally or knowingly aid, agree, solicit, or
4 conspire with any person who engages in an
5 unlawful act as defined under this section; or
6 (2) Knowingly makes, causes, or permits to be
7 presented any false statements or claims by any
8 person or on behalf of any person during an
9 official proceeding as defined by section 710-
10 1000.

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

15 (d) In prosecutions for insurance fraud or related offenses
16 including theft in sections 708-830, 708-830.5, 708-831, 708-832,
17 and 708-833, the offense charged is an "offense an element of
18 which is either fraud or a breach of fiduciary obligation" for
19 the purposes of extending, pursuant to section 701-108(3)(a), the
20 time limitations for prosecutions set forth in section 701-108.

21 **§431:2-D Insurance fraud in the first degree.** (a) A
22 person commits the offense of insurance fraud in the first degree
23 if the person intentionally or knowingly commits insurance fraud

SB. NO. 2286

1 where the value of the coverage, benefits, recovery, or
2 compensation obtained or attempted to be obtained exceeds
3 \$20,000.

4 (b) Insurance fraud in the first degree is a class B
5 felony.

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

8 **§431:2-E Insurance fraud in the second degree.** (a) A
9 person commits the offense of insurance fraud in the second
10 degree if the person intentionally or knowingly commits insurance
11 fraud where the value of the coverage, benefits, recovery, or
12 compensation obtained or attempted to be obtained exceeds \$300.

13 (b) Insurance fraud in the second degree is a class C
14 felony.

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

17 **§431:2-F Insurance fraud in the third degree.** (a) A
18 person commits the offense of insurance fraud in the third degree
19 if the person intentionally or knowingly commits insurance fraud
20 where the value of the coverage, benefits, recovery, or
21 compensation obtained or attempted to be obtained is \$300 or
22 less.

23 (b) Insurance fraud in the third degree is a misdemeanor.

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

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

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

14 (b) If a person is found to have intentionally or knowingly
15 committed insurance fraud under section 431:2-C, the commissioner
16 may assess a penalty including one or all of the following:

- 17 (1) Restitution to any insurer or other person of benefits
18 or payments fraudulently received or other damages or
19 costs incurred;
- 20 (2) A fine of not more than \$10,000 for each violation; or
- 21 (3) Reimbursement of attorneys' fees and costs of the party
22 sustaining a loss under this part.

SB. NG. 2286

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

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

9 (e) An administrative penalty may be imposed based upon a
10 judgment by a court of competent jurisdiction or upon an order by
11 the commissioner.

12 (f) If the commissioner intends to impose an administrative
13 penalty, the commissioner shall comply with chapter 91.

14 **§431:2-I Acceptance of payment.** A provider's failure to
15 dispute a reduced payment by an insurer shall not constitute an
16 implied admission that a fraudulent billing had been submitted.

17 **§431:2-J Civil cause of action for insurance fraud;**
18 **exemption.** (a) An insurer shall have a civil cause of action to
19 recover payments or benefits from any person who has violated
20 section 431:2-C. No recovery shall be allowed if the person has
21 made restitution under sections 431:2-G or 431:2-H(b)(1).

22 (b) A person or insurer, including an insurer's adjusters,
23 bill reviewers, producers, representatives, or common-law agents,

SB. NO. 2286

1 if acting without malice or fraudulent intent, shall not be
2 subject to civil liability for providing information, including
3 filing a report, furnishing oral, written, audio taped, video
4 taped, or electronic media evidence, providing documents, or
5 giving testimony concerning suspected, anticipated, or completed
6 insurance fraud to:

7 (1) A court;

8 (2) The commissioner or the commissioner's designee per
9 section 431:2-108;

10 (3) The insurance fraud investigations unit;

11 (4) The National Association of Insurance Commissioners;

12 (5) The National Insurance Crime Bureau;

13 (6) Any federal, state, or county law enforcement or
14 regulatory agency;

15 (7) Another insurer; or

16 (8) A hearings officer;

17 if the information is provided for the purpose of preventing,
18 investigating, or prosecuting either civilly or criminally,
19 insurance fraud, except if the person commits perjury.

20 (c) Civil actions brought for insurance fraud under this
21 part shall be brought within six years after the insurance fraud
22 is discovered or by exercise of reasonable diligence should have

SB. NO. 2286

1 been discovered and, in any event, no more than ten years after
2 the date on which a violation of this part is committed.

3 **§431:2-K Application and claim notification.** All
4 applications for insurance under title 24 and all claim forms
5 prepared by an insurer, regardless of the means of transmission,
6 shall contain or have attached to them the following or a
7 substantially similar statement, in a prominent location and
8 typeface: "For your protection, Hawaii law requires you to be
9 informed that presenting a fraudulent application for insurance
10 or a fraudulent claim for payment of a loss or benefit is a crime
11 punishable by fines, imprisonment, or both." The absence of the
12 warning in any application or claim form shall not constitute a
13 defense to a criminal charge or to a charge of insurance fraud
14 under this part or a civil cause of action under section 431:2-J.

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

22 (b) Information provided pursuant to this section shall be
23 protected from public disclosure; provided that the unit may

SB. NO. 2286

1 release the information in an administrative or judicial
2 proceeding to enforce this part, to federal, state, or local law
3 enforcement or regulatory authorities, to the National
4 Association of Insurance Commissioners, to the National Insurance
5 Crime Bureau, or to an insurer aggrieved by the alleged violation
6 of section 431:2-C.

7 **§431:2-M Deposit into the compliance resolution fund.** All
8 moneys that have been recovered by the commissioner as a result
9 of prosecuting insurance fraud violations pursuant to this part,
10 including civil fines, criminal fines, administrative fines, and
11 settlements, except for restitution made pursuant to section
12 431:2-G, 431:2-H(b)(1), or 431:2-J, shall be deposited into the
13 compliance resolution fund established pursuant to section 26-
14 9(o)."

15 SECTION 3. Section 431:2-203, Hawaii Revised Statutes, is
16 amended by amending subsection (b) to read as follows:

17 "(b) (1) A person who intentionally or knowingly violates,
18 intentionally or knowingly permits any person over whom
19 the person has authority to violate, or intentionally
20 or knowingly aids any person in violating any insurance
21 rule or statute of this State or any effective order
22 issued by the commissioner, shall be subject to any

SB. NO. 2286

1 penalty or fine as [~~stated in~~] provided by this code or
2 the penal code of the Hawaii Revised Statutes.

3 (2) If the commissioner has cause to believe that any
4 person has violated any penal provision of this code or
5 of other laws relating to insurance, the commissioner
6 [~~shall~~] may proceed against that person or may certify
7 the facts of the violation to the public prosecutor of
8 the jurisdiction in which the offense was committed.

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

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

16 SECTION 4. Section 431:2-204, Hawaii Revised Statutes, is
17 amended by amending subsection (d) to read as follows:

18 "(d) When the commissioner, through the insurance fraud
19 investigations unit, is conducting an investigation of possible
20 violations of [~~section 431:10C-307.7,~~] part , the commissioner
21 shall pay to a financial institution that is served a subpoena
22 issued under this section a fee for reimbursement of such costs
23 as are necessary and which have been directly incurred in

SB. NO. 2286

1 searching for, reproducing, or transporting books, papers,
2 documents, or other objects designated by the subpoena.
3 Reimbursement shall be paid at a rate not to exceed the rate set
4 forth in section 28-2.5(d)."

5 SECTION 5. Section 432:2-102, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

7 "(b) Nothing in this article shall exempt fraternal benefit
8 societies from the provisions and requirements of part___of
9 article 2 of chapter 431 and section 431:2-215."

10 SECTION 6. Section 431:10A-131, Hawaii Revised Statutes, is
11 repealed.

12 [~~"[§431:10A-131] Insurance fraud; penalties. (a) A person~~
13 ~~commits the offense of insurance fraud if the person acts or~~
14 ~~omits to act with intent to obtain benefits or recovery or~~
15 ~~compensation for services provided, or provides legal assistance~~
16 ~~or counsel with intent to obtain benefits or recovery, through~~
17 ~~the following means:~~

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

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

SB. NO. 2286

- 1 ~~(3) Knowingly presenting, or causing or permitting to be~~
2 ~~presented, multiple claims for the same loss or injury,~~
3 ~~including presenting multiple claims to more than one~~
4 ~~insurer, except when these multiple claims are~~
5 ~~appropriate;~~
- 6 ~~(4) Knowingly making, or causing or permitting to be made,~~
7 ~~any false claim for payment of a health care benefit;~~
- 8 ~~(5) Knowingly submitting, or causing or permitting to be~~
9 ~~submitted, a claim for a health care benefit that was~~
10 ~~not used by, or provided on behalf of, the claimant;~~
- 11 ~~(6) Knowingly presenting, or causing or permitting to be~~
12 ~~presented, multiple claims for payment of the same~~
13 ~~health care benefit except when these multiple claims~~
14 ~~are appropriate;~~
- 15 ~~(7) Knowingly presenting, or causing or permitting to be~~
16 ~~presented, for payment any undercharges for benefits on~~
17 ~~behalf of a specific claimant unless any known~~
18 ~~overcharges for benefits under this article for that~~
19 ~~claimant are presented for reconciliation at the same~~
20 ~~time;~~
- 21 ~~(8) Aiding, or agreeing or attempting to aid, soliciting,~~
22 ~~or conspiring with any person who engages in an~~
23 ~~unlawful act as defined under this section; or~~

SB. NO. 2286

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

5 ~~(b) Violation of subsection (a) is a criminal offense and~~
6 ~~shall constitute a:~~

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

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

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

16 ~~(c) Where the ability to make restitution can be~~
17 ~~demonstrated, any person convicted under this section shall be~~
18 ~~ordered by a court to make restitution to an insurer or any other~~
19 ~~person for any financial loss sustained by the insurer or other~~
20 ~~person caused by the act or acts for which the person was~~
21 ~~convicted.~~

22 ~~(d) A person, if acting without malice, shall not be~~
23 ~~subject to civil liability for providing information, including~~

SB. NO. 2286

1 ~~filing a report, furnishing oral or written evidence, providing~~
2 ~~documents, or giving testimony concerning suspected, anticipated,~~
3 ~~or completed public or private insurance fraud to a court, the~~
4 ~~commissioner, the insurance fraud investigations unit, the~~
5 ~~National Association of Insurance Commissioners, any federal,~~
6 ~~state, or county law enforcement or regulatory agency, or another~~
7 ~~insurer if the information is provided only for the purpose of~~
8 ~~preventing, investigating, or prosecuting insurance fraud, except~~
9 ~~if the person commits perjury.~~

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

14 ~~(f) An insurer shall have a civil cause of action to~~
15 ~~recover payments or benefits from any person who has~~
16 ~~intentionally obtained payments or benefits in violation of this~~
17 ~~section; provided that no recovery shall be allowed if the person~~
18 ~~has made restitution under subsection (e)."]~~

19 SECTION 7. Section 431:10C-307.7, Hawaii Revised Statutes,
20 is repealed.

21 [~~§431:10C-307.7 Insurance fraud; penalties.~~ (a) A person
22 ~~commits the offense of insurance fraud if the person acts or~~
23 ~~omits to act with intent to obtain benefits or recovery or~~

SB. NO. 2286

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

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

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

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

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

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

18 ~~(6) Knowingly presenting, or causing or permitting to be~~
19 ~~presented, multiple claims for payment of the same~~
20 ~~health care benefit except when these multiple claims~~
21 ~~are appropriate;~~

22 ~~(7) Knowingly presenting, or causing or permitting to be~~
23 ~~presented, for payment any undercharges for benefits on~~

SB. NO. 2286

1 ~~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, any~~
10 ~~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 is~~
16 ~~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 is~~
19 ~~more than \$300; or~~

20 ~~(3) Misdemeanor if the value of the benefits, recovery, or~~
21 ~~compensation obtained or attempted to be obtained is~~
22 ~~\$300 or less.~~

SB. NO. 2286

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 other~~
4 ~~person for any financial loss sustained by the insurer or other~~
5 ~~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 fraud~~
12 ~~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 relating~~
19 ~~to theft, fraud, or deception. Insurance fraud may be prosecuted~~
20 ~~under this section, or any other applicable section, and may be~~
21 ~~enjoined by a court of competent jurisdiction.~~

22 ~~(f) An insurer shall have a civil cause of action to~~
23 ~~recover payments or benefits from any person who has~~

SB. NO. 2286

1 ~~intentionally obtained payments or benefits in violation of this~~
2 ~~section; provided that no recovery shall be allowed if the person~~
3 ~~has made restitution under subsection (c).~~

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

15 ~~(h) An insurer, or the insurer's employee or agent, having~~
16 ~~determined that there is reason to believe that a claim is being~~
17 ~~made in violation of this section, shall provide to the insurance~~
18 ~~fraud investigations unit within sixty days of that~~
19 ~~determination, information, including documents and other~~
20 ~~evidence, regarding the claim in the form and manner prescribed~~
21 ~~by the unit. Information provided pursuant to this subsection~~
22 ~~shall be protected from public disclosure to the extent~~
23 ~~authorized by chapter 92F and section 431:2-209; provided that~~

SB. NO. 2286

1 ~~the unit may release the information in an administrative or~~
2 ~~judicial proceeding to enforce this section, to a federal, state,~~
3 ~~or local law enforcement or regulatory authority, to the National~~
4 ~~Association of Insurance Commissioners, or to an insurer~~
5 ~~aggrieved by the claim reasonably believed to violate this~~
6 ~~section."]~~

7 SECTION 8. Section 431:10C-307.8, Hawaii Revised Statutes,
8 is repealed.

9 ["~~§431:10C-307.8 Insurance fraud investigations unit.~~ (a)

10 ~~There is established in the insurance division an insurance fraud~~
11 ~~investigations unit.~~

12 ~~(b) The unit shall employ attorneys, investigators,~~
13 ~~investigator assistants, and other support staff as necessary to~~
14 ~~promote the effective and efficient conduct of the unit's~~
15 ~~activities. Notwithstanding any other law to the contrary, the~~
16 ~~attorneys may represent the State in any judicial or~~
17 ~~administrative proceeding to enforce all applicable state laws~~
18 ~~relating to insurance fraud, including but not limited to~~
19 ~~criminal prosecutions and actions for declaratory and injunctive~~
20 ~~relief. Investigators may serve process and apply for and~~
21 ~~execute search warrants pursuant to chapter 803 and the rules of~~
22 ~~court but shall not otherwise have the powers of a police officer~~

SB. NO. 2286

1 ~~or deputy sheriff. The commissioner may hire such employees not~~
2 ~~subject to chapter 76.~~

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

10 ~~(d) Funding for the insurance fraud investigations unit~~
11 ~~shall come from the motor vehicle insurance administration~~
12 ~~revolving fund."]~~

13 SECTION 9. Section 432:1-106, Hawaii Revised Statutes, is
14 repealed.

15 ~~["**[§432:1-106] Insurance fraud, penalties.** (a) A person~~
16 ~~commits the offense of insurance fraud if the person acts or~~
17 ~~omits to act with intent to obtain benefits or recovery or~~
18 ~~compensation for services provided, or provides legal assistance~~
19 ~~or counsel with intent to obtain benefits or recovery, through~~
20 ~~the following means:~~

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

SB. NO. 2286

- 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 injury,~~
5 ~~including presenting multiple claims to more than one~~
6 ~~insurer, except when these multiple claims are~~
7 ~~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 on~~
19 ~~behalf of a specific claimant unless any known~~
20 ~~overcharges for benefits under this article for that~~
21 ~~claimant are presented for reconciliation at the same~~
22 ~~time;~~

SB. NO. 2286

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

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

8 ~~(b) Violation of subsection (a) is a criminal offense and~~
9 ~~shall constitute a:~~

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

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

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

19 ~~(c) Where the ability to make restitution can be~~
20 ~~demonstrated, any person convicted under this section shall be~~
21 ~~ordered by a court to make restitution to an insurer or any other~~
22 ~~person for any financial loss sustained by the insurer or other~~

SB. NO. 2286

1 ~~person caused by the act or acts for which the person was~~
2 ~~convicted.~~

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

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

18 ~~(f) An insurer shall have a civil cause of action to~~
19 ~~recover payments or benefits from any person who has~~
20 ~~intentionally obtained payments or benefits in violation of this~~
21 ~~section; provided that no recovery shall be allowed if the person~~
22 ~~has made restitution under subsection (e)."]~~

23 SECTION 10. Section 432D-18.5, Hawaii Revised Statutes, is

SB. NO. 2286

1 repealed.

2 ~~["§432D-18.5] Insurance fraud, penalties. (a) A person~~
3 ~~commits the offense of insurance fraud if the person acts or~~
4 ~~omits to act with intent to obtain benefits or recovery or~~
5 ~~compensation for services provided, or provides legal assistance~~
6 ~~or counsel with intent to obtain benefits or recovery, through~~
7 ~~the following means:~~

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

SB. NO. 2286

- 1 ~~(6) Knowingly presenting, or causing or permitting to be~~
2 ~~presented, multiple claims for payment of the same~~
3 ~~health care benefit except when these multiple claims~~
4 ~~are appropriate;~~
- 5 ~~(7) Knowingly presenting, or causing or permitting to be~~
6 ~~presented, for payment any undercharges for benefits on~~
7 ~~behalf of a specific claimant unless any known~~
8 ~~overcharges for benefits under this article for that~~
9 ~~claimant are presented for reconciliation at the same~~
10 ~~time;~~
- 11 ~~(8) Aiding, or agreeing or attempting to aid, soliciting,~~
12 ~~or conspiring with any person who engages in an~~
13 ~~unlawful act as defined under this section; or~~
- 14 ~~(9) Knowingly making, or causing or permitting to be made,~~
15 ~~any false statements or claims by, or on behalf of, any~~
16 ~~person or persons during an official proceeding as~~
17 ~~defined by section 710 1000.~~
- 18 ~~(b) Violation of subsection (a) is a criminal offense and~~
19 ~~shall constitute a:~~
- 20 ~~(1) Class B felony if the value of the benefits, recovery,~~
21 ~~or compensation obtained or attempted to be obtained is~~
22 ~~more than \$20,000;~~

SB. NO. 2286

1 ~~(2) Class C felony if the value of the benefits, recovery,~~
2 ~~or compensation obtained or attempted to be obtained is~~
3 ~~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 other~~
10 ~~person for any financial loss sustained by the insurer or other~~
11 ~~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, anticipated,~~
17 ~~or completed public or private insurance fraud to a court, the~~
18 ~~commissioner, the insurance fraud investigations unit, the~~
19 ~~National Association of Insurance Commissioners, any federal,~~
20 ~~state, or county law enforcement or regulatory agency, or another~~
21 ~~insurer if the information is provided only for the purpose of~~
22 ~~preventing, investigating, or prosecuting insurance fraud, except~~
23 ~~if the person commits perjury.~~

SB. NO. 2286

1 ~~(e) This section shall not supersede any other law relating~~
2 ~~to theft, fraud, or deception. Insurance fraud may be prosecuted~~
3 ~~under this section, or any other applicable section, and may be~~
4 ~~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 person~~
9 ~~has made restitution under subsection (e)."]~~

10 SECTION 11. In codifying the new sections added by section
11 2 of this Act, the revisor of statutes shall substitute
12 appropriate section numbers for the letters used in designating
13 the new sections in this Act.

14 SECTION 12. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 13. This Act shall take effect on July 1, 2006.

17
18
19

INTRODUCED BY: 

BY REQUEST

JUSTIFICATION SHEET

SB. NO. 2286

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE FRAUD.

PURPOSE: To expand the authority of the insurance division's insurance fraud investigations unit to prevent, investigate, and prosecute both civilly and criminally insurance fraud relating to all lines of insurance within Title 24 within the State of Hawaii, in order to protect Hawaii's consumers and the insurance industry from the high cost of insurance fraud.

MEANS: Add a new part to article 2 of chapter 431, amend sections 431:2-203(b), 431:2-204(d), and 432:2-102, and repeal sections 431:10A-131, 431:10C-307.7, 431:10C-307.8, 432:1-106, and 432D-18.5, Hawaii Revised Statutes.

JUSTIFICATION: The Legislature enacted Act 251, Session Laws of Hawaii 1997, finding it necessary to protect Hawaii's citizens from the growing cost of motor vehicle insurance fraud. The Legislature then enacted Act 155 and Act 275, Session Laws of Hawaii 1998, enhancing and clarifying the fraud penalty statutes and the powers and purpose of the insurance fraud investigations unit. Then the Legislature enacted Act 125, Session Laws of Hawaii 2003, finding that insurance fraud crosses more than one line of insurance and expanding the crime of insurance fraud beyond motor vehicles to now include insurance fraud within health insurance.

Realizing that insurance fraud is not a crime limited strictly to motor vehicle or health insurance, but exists in every line of insurance, this bill will provide better tools for the insurance division to combat insurance fraud by investigating and prosecuting insurance fraud in all lines of

insurance by expanding the current jurisdiction of the insurance fraud investigations unit.

Since passage of the various laws creating fraud penalties in sections 386-98, 431:10A-131, 431:10C-307.7, 432:1-106, and 432D-18.5 for insurance fraud, little or no investigation or prosecution has occurred in the non-motor vehicle areas because the insurance fraud investigations unit's statutory authority is limited only to investigating and prosecuting motor vehicle insurance fraud.

This bill transfers the provisions governing the offense of insurance fraud and criminal and civil penalties to a new part to be added to article 2 of chapter 431, Hawaii Revised Statutes. This new fraud statute will redefine the offense of insurance fraud, provide for both criminal and civil penalties, and apply the new definition and penalties to the entirety of title 24 and thus all lines of insurance, except for workers' compensation, which is located in chapter 386, Hawaii Revised Statutes. Additionally, the new definition of insurance fraud will address fraud in all of its forms. Currently, those who have committed fraud as producers or on applications may not be prosecuted under the current offense of insurance fraud. The current insurance fraud statute limits the offense of insurance fraud to claims only. The new definition for insurance fraud includes additional language expanding the definition of insurance fraud to activities including applications and the sales of insurance if done fraudulently.

This bill will re-establish the insurance fraud investigations unit through a new part to be added to article 2 of chapter 431, Hawaii Revised Statutes. The insurance fraud investigations unit will have jurisdiction to investigate and prosecute

insurance fraud across all lines of insurance.

This bill will establish insurance fraud in the first, second, and third degree, as well as insurance fraud administrative penalties. This language will update insurance fraud to follow model language utilized by the State of Hawaii attorney general's office in the creation and revision of criminal penalty statutes. This will give greater flexibility to the insurance division in combating the problem of insurance fraud. The use of civil alternatives to criminal proceedings are well established in both federal and other states' laws to combat insurance fraud especially insurance fraud as it relates to health care.

This bill will establish that funding for the insurance fraud investigations unit shall come from the compliance resolution fund. The bill will also mandate that all moneys recovered by the unit as a result of insurance fraud violations will be deposited into the compliance resolution fund except for moneys paid for restitution. This will allow the insurance fraud investigations unit to help fund some of its cost in preventing, investigating, and prosecuting insurance fraud. All civil, criminal, and administrative fines, and settlements shall be deposited into the compliance resolution fund.

This bill will amend section 431:2-203, Hawaii Revised Statutes, to include language stating that if the commissioner has any cause to believe that an individual or business has violated a penal provision of title 24 or any other law relating to insurance fraud, the commissioner may take action against the individual or business through the insurance fraud investigations unit or the county prosecutor's office. Current language requires that any fraudulent activity discovered by the

insurance commissioner or the insurance division be reported to the county prosecutor in whose jurisdiction the fraudulent activity was discovered. This change will clarify the current language to allow the insurance commissioner and the insurance division to prosecute these fraud violations as an alternative to only reporting such violations to the county prosecutor.

Impact on the public: There should be a positive impact on the public as the insurance division will be allowed to more effectively fight insurance fraud across all lines of insurance and save more money for policyholders by reducing the amount paid out for fraudulent claims and policies.

Impact on the department and other agencies: This will have the positive effect of lessening the workload of other state law enforcement agencies by allowing the insurance division to continue its work in preventing, investigating, and prosecuting insurance fraud. Insurance fraud cases frequently cross more than one line of insurance. Due to the current limitation of the jurisdiction of the insurance fraud investigations unit, these cases are either not pursued or pursued to a limited scope. With the passage of this bill a more comprehensive approach can be taken to deter perpetrators of insurance fraud by demonstrating that no line of insurance will be a safe haven for those who commit insurance fraud. With the initial passage of this bill no additional staffing is being requested. Should it be determined that additional staffing may result in greater prevention and deterrence in stopping insurance fraud across all lines of insurance, then the insurance division will evaluate such additional staffing needs at a future date.

GENERAL FUND:

None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-106.

OTHER AFFECTED
AGENCIES: Department of the Attorney General

EFFECTIVE DATE: July 1, 2006.