

S .B. NO. 2201

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

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) Empower the insurance fraud investigations unit to
22 investigate and prosecute insurance fraud within the
23 workers' compensation line of insurance; and

1 (2) Revise workers' compensation insurance fraud definition
2 and penalties, by bringing them in line with other
3 insurance fraud statutes; and

4 (3) Expand the power of the insurance fraud investigation
5 unit to prosecute fraud in all lines of insurance.

6 SECTION 2. Chapter 386, Hawaii Revised Statutes, is amended
7 by adding to part III four new sections to be appropriately
8 designated and to read as follows:

9 **§386-A Workers' compensation insurance fraud in the first**
10 **degree.** (a) A person commits the offense of workers'
11 compensation insurance fraud in the first degree if the person
12 intentionally or knowingly commits workers' compensation
13 insurance fraud where the value of the coverage, benefits,
14 recovery, or compensation obtained or attempted to be obtained or
15 denied or attempted to be denied exceeds \$20,000.

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

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

20 **§386-B Workers' compensation insurance fraud in the second**
21 **degree.** (a) A person commits the offense of workers'
22 compensation insurance fraud in the second degree if the person
23 intentionally or knowingly commits workers' compensation

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

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

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

8 **§386-C Workers' compensation insurance fraud in the third**
9 **degree.** (a) A person commits the offense of workers'

10 compensation insurance fraud in the third degree if the person
11 intentionally or knowingly commits workers' compensation
12 insurance fraud where the value of the coverage, benefits,
13 recovery, or compensation obtained or attempted to be obtained or
14 denied or attempted to be denied is \$300 or less.

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

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

19 **§386-D Workers' compensation insurance fraud;**
20 **administrative penalties.** (a) In lieu of or in addition to the
21 criminal penalties set forth in section 386-A, 386-B, or 386-C, a
22 person who commits workers' compensation insurance fraud as
23 defined under section 386-98 also may be subject to one or more

1 of the following administrative penalties:

2 (1) Restitution of benefits or payments fraudulently
3 received under this chapter, whether received from an
4 employer, insurer, or the special compensation fund, to
5 be made to the source from which the compensation was
6 received;

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

8 (3) Suspension or termination of benefits in whole or in
9 part;

10 (4) Suspension or disqualification from providing medical
11 care or services, vocational rehabilitation services,
12 and all other services rendered for payment under this
13 chapter;

14 (5) Suspension or termination of payments for medical,
15 vocational rehabilitation, and all other services
16 rendered under this chapter;

17 (6) Recoupment by the insurer of all payments made for
18 medical care, medical services, vocational
19 rehabilitation services, and all other services
20 rendered for payment under this chapter; or

21 (7) Reimbursement of attorney's fees and costs of the party
22 or parties defrauded.

23 (b) With respect to the administrative penalties set forth

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

11 (c) For the purpose of this part, "person" means any individual,
12 company, association, organization, group, partnership, business,
13 trust, or corporation, but shall exclude insurers as defined in
14 section 431:1-202, mutual benefit societies as defined in section
15 432:1-104, and health maintenance organizations as defined in
16 section 432D-1.

17 SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended
18 by adding to article 2 a new part to be appropriately designated
19 and to read as follows:

20 "PART . INSURANCE FRAUD

21 §431:2-A Definitions. As used in this part:

22 "Unit" means the insurance fraud investigations unit of the
23 insurance division.

1 "Insurer" shall have the meaning as defined in section
2 431:1-202.

3 "Person" means any individual, company, association,
4 organization, group, partnership, business, trust, or
5 corporation, but shall exclude insurers as defined in section
6 431:1-202, mutual benefit societies as defined in section 432:1-
7 104, and health maintenance organizations as defined in section
8 432D-1.

9 **§431:2-B Insurance fraud investigations unit.** (a) There
10 is established in the insurance division the insurance fraud
11 investigations unit.

12 (b) The unit shall:

13 (1) Conduct a statewide program for the prevention of
14 insurance fraud relating, but not limited to, title 24
15 and chapter 386;

16 (2) Notwithstanding any other law to the contrary,
17 investigate and prosecute via criminal and civil courts
18 of competent jurisdiction all persons or insurers
19 involved in insurance fraud violations arising out of
20 but not limited to chapters 386, 431, 432, and 432D;

21 (3) Handle administrative hearings involving insurance
22 fraud; and

1 (4) Promote public and industry-wide education about
2 insurance fraud.

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

5 (d) The commissioner shall employ or retain, by contract or
6 otherwise, attorneys, investigators, investigator-auditors,
7 investigator assistants, auditors, accountants, physicians,
8 health care professionals, paralegals, consultants, experts, and
9 other professional, technical, and support staff as necessary to
10 promote the effective and efficient conduct of the unit's
11 activities. The commissioner may hire these employees without
12 regard to chapter 76.

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

1 (f) Investigators, investigator-auditors, investigator
2 assistants, and auditors appointed and commissioned under this
3 part shall have and may exercise all of the powers and authority
4 of a police officer or of a deputy sheriff.

5 (g) Funding for the insurance fraud investigations unit
6 shall come from the compliance resolution fund established
7 pursuant to section 26-9(o)."

8 SECTION 4. Section 386-98, Hawaii Revised Statutes, is
9 amended to read as follows:

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

23 (1) Presenting, or causing to be presented, any false

- 1 information on an application;
- 2 (2) Presenting, or causing to be presented, any false or
- 3 fraudulent claim for the payment of a loss;
- 4 (3) Presenting 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 and each insurer is notified immediately in
- 8 writing of all other claims and insurers;
- 9 (4) Making, or causing to be made, any false or fraudulent
- 10 claim for payment or denial of a health care benefit;
- 11 (5) Submitting a claim for a health care benefit that was
- 12 not used by, or on behalf of, the claimant;
- 13 (6) Presenting multiple claims for payment of the same
- 14 health care benefit;
- 15 (7) Misrepresenting or concealing a material fact;
- 16 (8) Fabricating, altering, concealing, making a false entry
- 17 in, or destroying a document for the purpose of falsely
- 18 obtaining benefits;
- 19 (9) Making, or causing to be made, any false or fraudulent
- 20 statements with regard to entitlements or benefits,
- 21 with the intent to discourage an injured employee from
- 22 claiming benefits or pursuing a workers' compensation
- 23 claim; or

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

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

10 (c) It shall be inappropriate for any discussion on
11 benefits, recovery, or settlement to include the threat or
12 implication of criminal prosecution. Any threat or implication
13 shall be immediately referred in writing to:

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

20 ~~[(d) An offense under subsections (a) and (b) shall~~
21 ~~constitute a:~~

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

SB. NO. 2287

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

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

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

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

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

17 ~~(2) Suspension or termination of benefits in whole or in~~
18 ~~part;~~

19 ~~(3) Suspension or disqualification from providing medical~~
20 ~~care or services, vocational rehabilitation services,~~
21 ~~and all other services rendered for payment under this~~
22 ~~chapter;~~

23 ~~(4) Suspension or termination of payments for medical,~~

1 ~~vocational rehabilitation and all other services~~

2 ~~rendered under this chapter;~~

3 ~~(5) Recoupment by the insurer of all payments made for~~

4 ~~medical care, medical services, vocational~~

5 ~~rehabilitation services, and all other services~~

6 ~~rendered for payment under this chapter; and~~

7 ~~(6) Reimbursement of attorney's fees and costs of the party~~

8 ~~or parties defrauded.~~

9 ~~(f) With respect to the administrative penalties set forth~~

10 ~~in subsection (c), no penalty shall be imposed except upon~~

11 ~~consideration of a written complaint that specifically alleges a~~

12 ~~violation of this section occurring within two years of the date~~

13 ~~of said complaint. A copy of the complaint specifying the~~

14 ~~alleged violation shall be served promptly upon the person~~

15 ~~charged. The director or board shall issue, where a penalty is~~

16 ~~ordered, a written decision stating all findings following a~~

17 ~~hearing held not fewer than twenty days after written notice to~~

18 ~~the person charged. Any person aggrieved by the decision may~~

19 ~~appeal the decision under sections 386-87 and 386-88.]~~

20 (d) This section shall not supersede any other law relating

21 to theft, fraud, or deception. Workers' compensation insurance

22 fraud may be prosecuted under this chapter or any other

23 applicable statute or common law and all such remedies shall be

1 cumulative.

2 (e) In prosecutions for workers' compensation insurance
3 fraud or related offenses including theft in sections 708-830,
4 708-830.5, 708-831, and 708-833, the offense charged is an
5 "offense an element of which is either fraud or breach of
6 fiduciary obligation" for the purposes of extending, pursuant to
7 section 701-108(3)(a), the time limitations for prosecutions set
8 forth in section 701-108.

9 (f) The insurance fraud investigations unit of the
10 department of commerce and consumer affairs may investigate and
11 initiate legal proceedings to enforce this section."

12 SECTION 5. Section 431:10C-307.7, Hawaii Revised Statutes,
13 is repealed.

14 [~~"§431:10C-307.7 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:~~

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

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

- 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~~

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~~

1 ~~filing a report, furnishing oral or written evidence, or giving~~
2 ~~testimony concerning suspected, anticipated, or completed~~
3 ~~insurance fraud to a court, the commissioner, the insurance fraud~~
4 ~~investigations unit, the National Association of Insurance~~
5 ~~Commissioners, any federal, state, or county law enforcement or~~
6 ~~regulatory agency, or another insurer if the information is~~
7 ~~provided only for the purpose of preventing, investigating, or~~
8 ~~prosecuting insurance fraud, except if the person commits~~
9 ~~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 ~~(g) All applications for insurance under this article and~~
20 ~~all claim forms provided and required by an insurer, regardless~~
21 ~~of the means of transmission, shall contain, or have attached to~~
22 ~~them, the following or a substantially similar statement, in a~~
23 ~~prominent location and typeface as determined by the insurer:~~

SB. NO. 2287

1 ~~"For your protection, Hawaii law requires you to be informed that~~
2 ~~presenting a fraudulent claim for payment of a loss or benefit is~~
3 ~~a crime punishable by fines or imprisonment, or both." The~~
4 ~~absence of such a warning in any application or claim form shall~~
5 ~~not constitute a defense to a charge of insurance fraud under~~
6 ~~this section.~~

7 ~~(h) An insurer, or the insurer's employee or agent, having~~
8 ~~determined that there is reason to believe that a claim is being~~
9 ~~made in violation of this section, shall provide to the insurance~~
10 ~~fraud investigations unit within sixty days of that~~
11 ~~determination, information, including documents and other~~
12 ~~evidence, regarding the claim in the form and manner prescribed~~
13 ~~by the unit. Information provided pursuant to this subsection~~
14 ~~shall be protected from public disclosure to the extent~~
15 ~~authorized by chapter 92F and section 431:2-209; provided that~~
16 ~~the unit may release the information in an administrative or~~
17 ~~judicial proceeding to enforce this section, to a federal, state,~~
18 ~~or local law enforcement or regulatory authority, to the National~~
19 ~~Association of Insurance Commissioners, or to an insurer~~
20 ~~aggrieved by the claim reasonably believed to violate this~~
21 ~~section."]~~

22 SECTION 6. Section 431:10C-307.8, Hawaii Revised Statutes,
23 is repealed.

SB. NO. 2287

1 ~~["§431:10C-307.8 Insurance fraud investigations unit. (a)~~

2 ~~There is established in the insurance division an insurance fraud~~
3 ~~investigations unit.~~


4 ~~(b) The unit shall employ attorneys, investigators,~~
5 ~~investigator assistants, and other support staff as necessary to~~
6 ~~promote the effective and efficient conduct of the unit's~~
7 ~~activities. Notwithstanding any other law to the contrary, the~~
8 ~~attorneys may represent the State in any judicial or~~
9 ~~administrative proceeding to enforce all applicable state laws~~
10 ~~relating to insurance fraud, including but not limited to~~
11 ~~criminal prosecutions and actions for declaratory and injunctive~~
12 ~~relief. Investigators may serve process and apply for and~~
13 ~~execute search warrants pursuant to chapter 803 and the rules of~~
14 ~~court but shall not otherwise have the powers of a police officer~~
15 ~~or deputy sheriff. The commissioner may hire such employees not~~
16 ~~subject to chapter 76.~~

17 ~~(c) The purpose of the insurance fraud investigations unit~~
18 ~~shall be to conduct a statewide program for the prevention,~~
19 ~~investigation, and prosecution of insurance fraud cases and~~
20 ~~violations of all applicable state laws relating to insurance~~
21 ~~fraud. The insurance fraud investigations unit may also review~~
22 ~~and take appropriate action on complaints relating to insurance~~
23 ~~fraud."]~~

1 SECTION 7. In codifying the new sections added by sections
2 2 and 3 of this Act, the revisor of statutes shall substitute
3 appropriate section numbers for the letters used in designating
4 the new sections in this Act.

5 SECTION 8. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

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

8
9 INTRODUCED BY: 

10 BY REQUEST

SB. NO. 2287

JUSTIFICATION SHEET

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 within the workers' compensation insurance line 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 four new sections to part III of chapter 386, add a new part to article 2 of chapter 431, amend section 386-98, and repeal sections 431:10C-307.7 and 431:10C-307.8, 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 fraud by preventing, investigating, and prosecuting insurance fraud within the workers' compensation line of insurance by

expanding the current jurisdiction of the insurance fraud investigations unit.

Currently, there are insurance fraud penalties in five lines of insurance. These are motor vehicle, private health insurance, mutual benefit societies, health maintenance organizations, and workers' compensation. The insurance fraud investigations unit is limited to investigating and prosecuting only motor vehicle insurance fraud. Since passage of the various laws creating fraud penalties in sections 386-98, 431:10A-131, 432:1-106, and 432D-18.5 for insurance fraud, little or no investigation or prosecution has occurred in these areas.

The bill will establish four new sections in chapter 386, Hawaii Revised Statutes, relating to workers' compensation. These statutes will establish the crimes of workers' compensation insurance fraud in the first, second, and third degree, as well as workers' compensation insurance fraud administrative penalties. This language will update provisions pertaining to workers' compensation insurance fraud to follow model language utilized by the State of Hawaii Attorney General in the creation and revision of criminal penalty statutes.

This bill will revise the laws governing 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 including workers' compensation insurance fraud. Additionally, the bill will provide that the insurance fraud investigations unit shall investigate and prosecute insurance fraud within the workers' compensation line of insurance.

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 involve 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. The Department of Labor and Industrial Relations (DLIR), which currently oversees workers' compensation, does not have the staffing to conduct fraud investigations and prosecutions. This bill will allow the insurance division to assist the DLIR's workers' compensation division in reducing the amount of money lost to fraud in workers' compensation. 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 of 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.

SB. NO. 2287

OTHER AFFECTED

AGENCIES:

Department of Labor and Industrial
Relations, Disability Compensation Division;
Department of the Attorney General; and
Department of Human Resources Development.

EFFECTIVE DATE:

July 1, 2006.