

HOUSE OF REPRESENTATIVES

AMENDMENT TO: Senate Bill No. 1412, Senate Draft 2, House Draft 2

OFFERED BY: Representative Lynn Finnegan *LF*

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SECTION 1. Senate Bill No. 1412, Senate Draft 2, House Draft 2, is amended by deleting its contents and inserting the following language, to read as follows:

"SECTION 1. Insurance fraud is reported to cost every household in the United States an average of \$500 per year. In Hawaii, the cost of motor vehicle insurance fraud alone has been estimated to be over \$164 annually per household. In recognition of the impact that fraud has on the cost of motor vehicle insurance, Act 251, Session Laws of Hawaii 1997, was

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enacted to establish an insurance fraud investigations unit, and motor vehicle insurance fraud violations, and penalties. Act 155, Session Laws of Hawaii 1998, was enacted the following year to clarify the penalties for the offense of motor vehicle insurance fraud and enhanced and clarified the powers and purpose of the insurance fraud investigations unit to combat motor vehicle insurance fraud.

Insurance fraud also has increasingly affected costs within the health insurance industry. Industry healthcare fraud losses are estimated at three to fourteen per cent of the \$1,200,000,000,000 in annual national healthcare costs. This is equivalent to approximately \$36,000,000,000 to \$168,000,000,000 annually. In Hawaii, based on the conservative estimate that insurance fraud amounts to three per cent of annual Hawaii healthcare costs, health insurance fraud causes losses that exceed \$60,000,000 annually. Realizing that insurance fraud is a growing problem in the area of health insurance, health insurance fraud provisions were enacted in Act 125, Session Laws of Hawaii 2003. However, none of the healthcare insurance fraud provisions designate a specific law enforcement agency to be responsible for the investigation and prosecution of insurance fraud violations.

No line of insurance is exempt from insurance fraud. Rather than limit administrative, civil, and criminal penalties

for insurance fraud to only a few selected lines of insurance, Hawaii's insurance fraud law should be expanded to include all lines of insurance 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 purpose of this Act is to:

- (1) Establish the insurance fraud investigations branch to replace the existing insurance fraud investigations unit, and empower it to investigate and prosecute insurance fraud in all lines of insurance, except workers' compensation insurance;
- (2) Establish administrative, civil, and criminal penalties for offenses of insurance fraud in all lines of insurance, except workers' compensation insurance, and for different types of insurance fraud, including fraudulent applications and sales; and
- (3) Establish that fines and settlements resulting from successful insurance fraud prosecutions are to be deposited into the compliance resolution fund to help the insurance fraud investigations branch to cover some of the cost of its own operation to prevent, investigate, and prosecute insurance fraud.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding to article 2 a new part to be appropriately

designated and to read as follows:

"PART . INSURANCE FRAUD

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

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

"Insurance policy" for the purpose of this part, means a contract issued by an insurer or other licensee.

"Licensee" means an entity licensed under and governed by title 24, including but not limited to an insurer governed by chapter 431, a mutual benefit society governed by article 1 of chapter 432, a fraternal benefit society governed by article 2 of chapter 432, and a health maintenance organization governed by chapter 432D, and their respective agents and employees engaged in the business of the licensee, except for the business of providing workers' compensation insurance.

"Person" means any individual, company, association, organization, group, partnership, business, trust, or corporation; but shall exclude insurer, as defined in section 431:1-202, and other licensees, as defined in this part.

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

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

(b) The branch shall:

- (1) Conduct a statewide program for the prevention of insurance fraud relating to but not limited to title 24, except workers' compensation insurance;
- (2) Notwithstanding any other law to the contrary investigate, and prosecute in administrative hearings and courts of competent jurisdiction all persons involved in insurance fraud violations arising out of but not limited to chapters 431, 432, and 432D; and
- (3) Promote public and industry-wide education about insurance fraud.

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

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

(e) Notwithstanding any other law to the contrary, an attorney employed or retained by the branch may represent the State in any criminal, civil, or administrative proceeding to enforce all applicable state laws relating to insurance fraud,

including but not limited to criminal prosecutions, disciplinary actions, and actions for declaratory and injunctive relief. Each attorney representing the State in such a proceeding shall be designated by the attorney general as a special deputy attorney general. The decision to designate an attorney as a special deputy attorney general shall be solely within the discretion of the attorney general.

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

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

§431:2-C Insurance fraud. (a) A person commits the offense of insurance fraud if the person intentionally or knowingly misrepresents or conceals material facts, opinions, intention, or law to obtain or attempt to obtain coverage, benefits, recovery, or compensation for services by:

- (1) Presenting, or causing or permitting to be presented, an application, whether written, typed, or transmitted through electronic media, for the issuance or renewal of an insurance policy or reinsurance contract;

- (2) Presenting, or causing or permitting to be presented, false information on a claim for payment whether typed, written, or transmitted through electronic media;
- (3) Presenting, or causing or permitting to be presented, a claim for the payment of a loss;
- (4) Presenting, or causing or permitting to be presented, improper multiple duplicative claims for the same loss or injury, including knowingly presenting the multiple and duplicative claims to more than one insurer;
- (5) Presenting, or causing or permitting to be presented, any claim for payment of a health care benefit;
- (6) Presenting, or causing or permitting to be presented, a claim for a health care benefit that was not used by, or provided on behalf of, the claimant;
- (7) Presenting, or causing or permitting to be presented, improper multiple and duplicative claims for payment of the same health care benefit;
- (8) Presenting, or causing or permitting to be presented, for payment, any undercharges for benefits on behalf of a specific claimant unless any known overcharges for benefits under this article for that claimant are presented for reconciliation at the same time;

- (9) Fabricating, altering, concealing, making an entry in, or destroying a document whether typed, written, or through an audio or video tape or electronic media;
- (10) Presenting, or causing or permitting to be presented, to a person, insurer, or other licensee false, incomplete, or misleading information to obtain coverage or payment otherwise available under an insurance policy;
- (11) Presenting, or causing or permitting to be presented, to a person or producer, information about a person's status as a licensed producer that induces a person or insurer to purchase an insurance policy or reinsurance contract;
- (12) Making, or causing or permitting to be made, any statement, either typed, written, or through audio or video tape or electronic media, or claims by the person or on behalf of a person with regard to obtaining legal recovery or benefits; and
- (13) Intentionally or knowingly aiding, agreeing, or attempting to aid, solicit, or conspire with any person who engages in an unlawful act as defined under this section; or
- (14) Intentionally or knowingly making, causing, or permitting to be presented, any false statements or

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

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

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

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

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

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

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

§431:2-D Restitution. Where the ability to make restitution can be demonstrated, any person convicted under this

part shall be ordered by a court to make restitution to any insurer, person, or other licensee for any financial loss sustained by that insurer, person, or licensee caused by the act or acts for which the person was convicted.

§431:2-E Insurance fraud; administrative penalties. (a)

In addition to or in lieu of criminal penalties under section 431:2-C(b), any person who commits insurance fraud as defined under section 431:2-C, may be subject to the administrative penalties of subsection (b).

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

- (1) Restitution to any insurer or any other person of benefits or payments fraudulently received or other damages or costs incurred;
- (2) A fine of not more than \$10,000 for each violation; and
- (3) Reimbursement of attorneys' fees and costs of the party sustaining a loss under this part, except that the State shall be exempt from paying attorney fees and costs to other parties.

(c) Administrative actions brought for insurance fraud under this part shall be brought within six years after the insurance fraud is discovered or by exercise of reasonable

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

(d) For the purpose of subsection (b), "knowingly" means that a person, has actual knowledge of the facts; and

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

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

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

§431:2-F Administrative procedures. (a) An administrative penalty may be imposed based upon a judgment by a court of competent jurisdiction or upon an order by the commissioner.

(b) Prior to imposition of any administrative remedy the commissioner shall hold a hearing in accordance with chapter 91.

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

§431:2-H Civil cause of action for insurance fraud; exemption. (a) An insurer or other licensee shall have a civil cause of action to recover payments or benefits from any person who has violated any practice prohibited by section 431:2-C of

this part. No recovery shall be allowed if the person has made restitution under section 431:2-D or 431:2-E(b) (1).

(b) A person, insurer, or other licensee including an insurer or other licensee's adjusters, bill reviewers, producers, representatives, or common-law agents, if acting without actual malice, shall not be subject to civil liability for providing information, including filing a report, furnishing oral, written, audio taped, video taped, or electronic media evidence, providing documents, or giving testimony concerning suspected, anticipated, or completed insurance fraud to:

- (1) A court;
- (2) The commissioner;
- (3) The insurance fraud investigations branch;
- (4) The National Association of Insurance Commissioners;
- (5) The National Insurance Crime Bureau;
- (6) Any federal, state, or county law enforcement or regulatory agency; or
- (7) Another insurer or other licensee, if the information is provided for the purpose of preventing, investigating, or prosecuting insurance fraud;

unless the person commits perjury.

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

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

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

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

§431:2-J Deposit into the compliance resolution fund. All moneys that have been recovered by the department of commerce and consumer affairs as a result of prosecuting insurance fraud violations pursuant to this part, including civil fines, criminal fines, administrative fines, and settlements, but not

including restitution made pursuant to sections 431:2-D, 431:2-E(b) (1) or 431:2-H, shall be deposited into the compliance resolution fund established pursuant to section 26-9(o)."

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

"(b) (1) A person who intentionally or knowingly violates, intentionally or knowingly permits any person over whom the person has authority to violate, or intentionally or knowingly aids any person in violating any insurance rule or statute of this State or any effective order issued by the commissioner, shall be subject to any penalty or fine as ~~[stated in]~~ provided by this code or the penal code of the Hawaii Revised Statutes.

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

(3) Violation of any provision of this code is punishable by a fine of not less than \$100 nor more than \$10,000 per violation, or by imprisonment for not more than

one year, or both, in addition to any other penalty or forfeiture provided herein or otherwise by law.

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

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

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

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

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

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

~~["§431:10A-131] Insurance fraud; penalties. (a) A~~

~~person commits the offense of insurance fraud if the person acts or omits to act with intent to obtain benefits or recovery or compensation for services provided, or provides legal assistance or counsel with intent to obtain benefits or recovery, through the following means:~~

- ~~(1) Knowingly presenting, or causing or permitting to be presented, with the intent to defraud, any false information on a claim;~~
- ~~(2) Knowingly presenting, or causing or permitting to be presented, any false claim for the payment of a loss;~~
- ~~(3) Knowingly presenting, or causing or permitting to be presented, multiple claims for the same loss or injury, including presenting multiple claims to more than one insurer, except when these multiple claims are appropriate;~~
- ~~(4) Knowingly making, or causing or permitting to be made, any false claim for payment of a health care benefit;~~
- ~~(5) Knowingly submitting, or causing or permitting to be submitted, a claim for a health care benefit that was not used by, or provided on behalf of, the claimant;~~
- ~~(6) Knowingly presenting, or causing or permitting to be presented, multiple claims for payment of the same~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- ~~(1) Knowingly presenting, or causing or permitting to be presented, any false information on a claim;~~
- ~~(2) Knowingly presenting, or causing or permitting to be presented, any false claim for the payment of a loss;~~
- ~~(3) Knowingly presenting, or causing or permitting to be presented, multiple claims for the same loss or injury, including presenting multiple claims to more than one insurer, except when these multiple claims are appropriate;~~
- ~~(4) Knowingly making, or causing or permitting to be made, any false claim for payment of a health care benefit;~~

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

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

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

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

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

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

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

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

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

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

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

~~prosecuting insurance fraud, except if the person commits perjury.~~

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

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

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

~~(h) An insurer, or the insurer's employee or agent, having determined that there is reason to believe that a claim is being~~

~~made in violation of this section, shall provide to the insurance fraud investigations unit within sixty days of that determination, information, including documents and other evidence, regarding the claim in the form and manner prescribed by the unit. Information provided pursuant to this subsection shall be protected from public disclosure to the extent authorized by chapter 92F and section 431:2-209; provided that the unit may release the information in an administrative or judicial proceeding to enforce this section, to a federal, state, or local law enforcement or regulatory authority, to the National Association of Insurance Commissioners, or to an insurer aggrieved by the claim reasonably believed to violate this section."]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~["§432D-19.5] Insurance fraud, penalties. (a) A person commits the offense of insurance fraud if the person acts or omits to act with intent to obtain benefits or recovery or compensation for services provided, or provides legal assistance or counsel with intent to obtain benefits or recovery, through the following means:~~

- ~~(1) Knowingly presenting, or causing or permitting to be presented, with the intent to defraud, any false information on a claim;~~
- ~~(2) Knowingly presenting, or causing or permitting to be presented, any false claim for the payment of a loss;~~
- ~~(3) Knowingly presenting, or causing or permitting to be presented, multiple claims for the same loss or injury, including presenting multiple claims to more than one insurer, except when these multiple claims are appropriate;~~
- ~~(4) Knowingly making, or causing or permitting to be made, any false claim for payment of a health care benefit;~~
- ~~(5) Knowingly submitting, or causing or permitting to be submitted, a claim for a health care benefit that was not used by, or provided on behalf of, the claimant;~~
- ~~(6) Knowingly presenting, or causing or permitting to be presented, multiple claims for payment of the same~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

An officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil

service position as a consequence of this Act shall become a civil service employee without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that such officer or employee possesses the minimum qualifications for the position to which transferred or appointed.

If an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

SECTION 12. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the insurance fraud investigations unit relating to the functions transferred to the insurance fraud investigations branch shall be transferred with the functions to which they relate.

SECTION 13. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute

appropriate section numbers for the letters used in designating the new sections in this Act.

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

SECTION 15. This Act shall take effect on July 1, 2007."