
A BILL FOR AN ACT

RELATING TO INSURANCE FRAUD.

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

1 SECTION 1. In Hawaii, the cost of motor vehicle insurance
2 fraud has been estimated to be over \$164 annually per household.
3 In recognition of the impact that fraud has on the cost of motor
4 vehicle insurance, Act 251, Session Laws of Hawaii 1997,
5 established an insurance fraud investigations unit, and motor
6 vehicle insurance fraud violations and penalties. Act 155,
7 Session Laws of Hawaii 1998, was enacted the following year and
8 among other things changed the penalty structure for the offense
9 of motor vehicle insurance fraud and enhanced and clarified the
10 powers and purpose of the insurance fraud investigations unit to
11 combat motor vehicle insurance fraud.

12 Insurance fraud also has increasingly affected costs within
13 the health insurance industry. Some estimates by government and
14 law enforcement agencies place the loss as high as ten per cent
15 of our annual expenditures for health care, which in 2006
16 reached \$2,100,000,000,000 nationally. The Hawaii Medical
17 Service Association stated in 2008 that, based on Blue Cross and
18 Blue Shield Association estimates, each family in the United



1 States pays an extra \$800 for health care every year because of
2 health insurance fraud.

3 The health insurance fraud provisions of Act 125, Session
4 Laws of Hawaii 2003, were enacted in recognition that insurance
5 fraud is a growing problem in the area of health insurance.
6 However, none of the health care insurance fraud provisions of
7 that Act clearly designate a specific law enforcement agency to
8 be responsible for the investigation and prosecution of
9 insurance fraud violations.

10 No line of insurance is exempt from insurance fraud.
11 Rather than limit administrative, civil, and criminal penalties
12 for insurance fraud to only a few selected lines of insurance,
13 Hawaii's insurance fraud law should be expanded to include all
14 lines of insurance to deter perpetrators of insurance fraud by
15 demonstrating that no line of insurance will be a safe haven for
16 those who commit insurance fraud.

17 The purpose of this Act is to establish:

- 18 (1) The insurance fraud investigations branch to replace
19 the existing insurance fraud investigations unit
20 established in Act 251, Session Laws of Hawaii 1997,
21 and expanded by Act 155, Session Laws of Hawaii 1998,



1 and empower it to investigate and prosecute insurance
2 fraud in all lines of insurance;

3 (2) Administrative, civil, and criminal penalties for
4 offenses of insurance fraud in all lines of insurance
5 and for different types of insurance fraud, including
6 fraudulent applications and sales; and

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

13 It is not the purpose of this Act to create an insurance fraud
14 investigating branch for cases and violations related to
15 workers' compensation or arising from chapter 386, Hawaii
16 Revised Statutes.

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



1 "PART . INSURANCE FRAUD

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

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

5 "Insurance policy" means a contract issued by an insurer or
6 other licensee.

7 "Licensee" means an entity licensed under and governed by
8 title 24, including but not limited to:

9 (1) An insurer governed by chapter 431;

10 (2) A mutual benefit society governed by article 1 of
11 chapter 432;

12 (3) A fraternal benefit society governed by article 2 of
13 chapter 432; or

14 (4) A health maintenance organization governed by chapter
15 432D,

16 and their respective agents and employees engaged in the
17 business of the licensee.

18 "Person" means any individual, company, association,
19 organization, group, partnership, business, trust, or
20 corporation; but shall exclude an insurer, as defined in section
21 431:1-202, and other licensees, as defined in this part.



1 §431:2-B Insurance fraud investigations branch. (a)
2 There is established in the insurance division the insurance
3 fraud investigations branch.

4 (b) The branch shall:

5 (1) Conduct a statewide program for the prevention of
6 insurance fraud relating to but not limited to title
7 24;

8 (2) Notwithstanding any other law to the contrary,
9 investigate and prosecute in administrative hearings
10 and courts of competent jurisdiction all persons
11 involved in insurance fraud violations arising out of
12 but not limited to chapters 431, 432, and 432D; and

13 (3) Promote public and industry-wide education about
14 insurance fraud.

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

17 (d) The commissioner shall employ or retain, by contract
18 or otherwise, attorneys, investigators, investigator assistants,
19 auditors, accountants, physicians, health care professionals,
20 paralegals, consultants, experts, and other professional,
21 technical, and support staff as necessary to promote the
22 effective and efficient conduct of the branch's activities. The



1 commissioner may hire such employees without regard to chapter
2 76.

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

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

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

20 **§431:2-C Insurance fraud.** (a) A person commits the
21 offense of insurance fraud if the person:



- 1 (1) Intentionally or knowingly misrepresents or conceals
2 material facts, opinions, intention, or law to obtain
3 or attempt to obtain coverage, benefits, recovery, or
4 compensation for services provided in the following
5 situations or circumstances:
 - 6 (A) When presenting, or causing or permitting to be
7 presented, an application, whether written,
8 typed, or transmitted through electronic media,
9 for the issuance or renewal of an insurance
10 policy or reinsurance contract;
 - 11 (B) When presenting, or causing or permitting to be
12 presented, false information on a claim for
13 payment whether typed, written, or transmitted
14 through electronic media;
 - 15 (C) When presenting, or causing or permitting to be
16 presented, a claim for the payment of a loss;
 - 17 (D) When presenting, or causing or permitting to be
18 presented, improper multiple duplicative claims
19 for the same loss or injury, including knowingly
20 presenting such multiple and duplicative claims
21 to more than one insurer;



- 1 (E) When presenting, or causing or permitting to be
2 presented, any claim for payment of a health care
3 benefit;
- 4 (F) When presenting, or causing or permitting to be
5 presented, a claim for a health care benefit that
6 was not used by, or provided on behalf of, the
7 claimant;
- 8 (G) When presenting, or causing or permitting to be
9 presented, improper multiple and duplicative
10 claims for payment of the same health care
11 benefit;
- 12 (H) When presenting, or causing or permitting to be
13 presented, for payment, any undercharges for
14 benefits on behalf of a specific claimant unless
15 any known overcharges for benefits under this
16 article for that claimant are presented for
17 reconciliation at the same time;
- 18 (I) When fabricating, altering, concealing, making an
19 entry in, or destroying a document whether typed,
20 written, or through an audio or video tape or
21 electronic media;



- 1 (J) When presenting, or causing or permitting to be
2 presented, to a person, insurer, or other
3 licensee false, incomplete, or misleading
4 information to obtain coverage or payment
5 otherwise available under an insurance policy;
- 6 (K) When presenting, or causing or permitting to be
7 presented, to a person or producer, information
8 about a person's status as a licensed producer
9 that induces a person or insurer to purchase an
10 insurance policy or reinsurance contract; and
- 11 (L) When making, or causing or permitting to be made,
12 any statement, either typed, written, or through
13 audio or video tape or electronic media, or
14 claims by the person or on behalf of a person
15 with regard to obtaining legal recovery or
16 benefits;
- 17 (2) Intentionally or knowingly aids, agrees, or attempts
18 to aid, solicit, or conspire with any person who
19 engages in an unlawful act as defined under this
20 section; or
- 21 (3) Intentionally or knowingly makes, causes, or permits
22 to be presented, any false statements or claims by any



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

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

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

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

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

17 (c) This section shall not supersede any other law
18 relating to theft, fraud, or deception. Insurance fraud may be
19 prosecuted under this part, or any other applicable statute or
20 common law, and may be enjoined by a court of competent
21 jurisdiction.



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

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

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

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

17 (1) Restitution to any insurer or any other person of
18 benefits or payments fraudulently received or other
19 damages or costs incurred;

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



1 (3) Reimbursement of attorneys' fees and costs of the
2 party sustaining a loss under this part, except that
3 the State shall be exempt from paying attorney fees
4 and costs to other parties.

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

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

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

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

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

19 **§431:2-F Administrative procedures.** (a) An
20 administrative penalty may be imposed based upon a judgment by a
21 court of competent jurisdiction or upon an order by the
22 commissioner.



1 (b) The commissioner shall hold a hearing in accordance
2 with chapter 91, prior to imposition of any administrative
3 remedy.

4 **§431:2-G Acceptance of payment.** A provider's failure to
5 dispute a reduced payment by an insurer shall not constitute an
6 implied admission that a fraudulent billing had been submitted.

7 **§431:2-H Civil cause of action for insurance fraud;
8 exemption.** (a) An insurer or other licensee shall have a civil
9 cause of action to recover payments or benefits from any person
10 who has violated any practice prohibited by section 431:2-C. No
11 recovery shall be allowed if the person has made restitution
12 under section 431:2-D or 431:2-E(b) (1).

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

21 (1) A court;

22 (2) The commissioner;



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

10 (c) Civil actions brought for insurance fraud under this

11 part shall be brought within six years after the insurance fraud

12 is discovered or by exercise of reasonable diligence should have

13 been discovered and, in any event, no more than ten years after

14 the date on which a violation of this part is committed.

15 **§431:2-I Mandatory reporting.** (a) Within sixty days of

16 an insurer or other licensee'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 or licensee shall provide to the

20 insurance fraud investigations branch information, including

21 documents and other evidence, regarding the alleged violation of

22 section 431:2-C.



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

10 **§431:2-J Deposit into the compliance resolution fund.** All
11 moneys that have been recovered by the department of commerce
12 and consumer affairs as a result of prosecuting insurance fraud
13 violations pursuant to this part, including civil fines,
14 criminal fines, administrative fines, and settlements, but not
15 including restitution made pursuant to section 431:2-D, 431:2-
16 E(b)(1), or 431:2-H, shall be deposited into the compliance
17 resolution fund established pursuant to section 26-9(o)."

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

20 "(b) (1) A person who intentionally or knowingly violates,
21 intentionally or knowingly permits any person over
22 whom the person has authority, to violate, or



1 intentionally or knowingly aids any person in
2 violating any insurance rule or statute of this State
3 or any effective order issued by the commissioner,
4 shall be subject to any penalty or fine as [~~stated in~~]
5 provided by this code or the penal code of the Hawaii
6 Revised Statutes.

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

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

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

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



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

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

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

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

18 ["~~§431:10A-131~~] ~~Insurance fraud; penalties.~~ (a) A
19 ~~person commits the offense of insurance fraud if the person acts~~
20 ~~or omits to act with intent to obtain benefits or recovery or~~
21 ~~compensation for services provided, or provides legal assistance~~



1 ~~or counsel with intent to obtain benefits or recovery, through~~
2 ~~the following means:~~

3 ~~(1) Knowingly presenting, or causing or permitting to be~~
4 ~~presented, with the intent to defraud, any false~~
5 ~~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~~
10 ~~injury, including presenting multiple claims to more~~
11 ~~than one insurer, except when these multiple claims~~
12 ~~are 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;~~



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

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

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

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

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

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

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

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

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

21 ~~(e) This section shall not supersede any other law~~
22 ~~relating to theft, fraud, or deception. Insurance fraud may be~~



1 ~~prosecuted under this section, or any other applicable section,~~
2 ~~and may be enjoined by a court of competent jurisdiction.~~

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

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

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

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

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

20 ~~(3) Knowingly presenting, or causing or permitting to be~~
21 ~~presented, multiple claims for the same loss or~~
22 ~~injury, including presenting multiple claims to more~~



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



1 ~~any person or persons during an official proceeding as~~
2 ~~defined by section 710 1000.~~

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

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

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

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

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

20 ~~(d) A person, if acting without malice, shall not be~~
21 ~~subject to civil liability for providing information, including~~
22 ~~filing a report, furnishing oral or written evidence, or giving~~



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

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

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

18 ~~(g) All applications for insurance under this article and~~
19 ~~all claim forms provided and required by an insurer, regardless~~
20 ~~of the means of transmission, shall contain, or have attached to~~
21 ~~them, the following or a substantially similar statement, in a~~
22 ~~prominent location and typeface as determined by the insurer:~~



1 ~~"For your protection, Hawaii law requires you to be informed~~
2 ~~that presenting a fraudulent claim for payment of a loss or~~
3 ~~benefit is a crime punishable by fines or imprisonment, or~~
4 ~~both." The absence of such a warning in any application or~~
5 ~~claim form shall not constitute a defense to a charge of~~
6 ~~insurance fraud under 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~~
10 ~~insurance 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,~~
18 ~~state, or local law enforcement or regulatory authority, to the~~
19 ~~National Association of Insurance Commissioners, or to an~~
20 ~~insurer aggrieved by the claim reasonably believed to violate~~
21 ~~this section."]~~



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

3 [~~"§431:10C-307.8 Insurance fraud investigations unit. (a)~~
4 ~~There is established in the insurance division an insurance~~
5 ~~fraud investigations unit.~~

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

19 ~~(c) The purpose of the insurance fraud investigations unit~~
20 ~~shall be to conduct a statewide program for the prevention,~~
21 ~~investigation, and prosecution of insurance fraud cases and~~
22 ~~violations of all applicable state laws relating to insurance~~



1 ~~fraud. The insurance fraud investigations unit may also review~~
2 ~~and take appropriate action on complaints relating to insurance~~
3 ~~fraud."]~~

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

6 ["~~[§432:1-106] Insurance fraud, penalties.~~ (a) A person
7 ~~commits the offense of insurance fraud if the person acts or~~
8 ~~omits to act with intent to obtain benefits or recovery or~~
9 ~~compensation for services provided, or provides legal assistance~~
10 ~~or counsel with intent to obtain benefits or recovery, through~~
11 ~~the following means:~~

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

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

17 ~~(3) Knowingly presenting, or causing or permitting to be~~
18 ~~presented, multiple claims for the same loss or~~
19 ~~injury, including presenting multiple claims to more~~
20 ~~than one insurer, except when these multiple claims~~
21 ~~are appropriate;~~



- 1 ~~(4) Knowingly making, or causing or permitting to be made,~~
2 ~~any false claim for payment of a health care benefit;~~
- 3 ~~(5) Knowingly submitting, or causing or permitting to be~~
4 ~~submitted, a claim for a health care benefit that was~~
5 ~~not used by, or provided on behalf of, the claimant;~~
- 6 ~~(6) Knowingly presenting, or causing or permitting to be~~
7 ~~presented, multiple claims for payment of the same~~
8 ~~health care benefit except when these multiple claims~~
9 ~~are appropriate;~~
- 10 ~~(7) Knowingly presenting, or causing or permitting to be~~
11 ~~presented, for payment any undercharges for benefits~~
12 ~~on behalf of a specific claimant unless any known~~
13 ~~overcharges for benefits under this article for that~~
14 ~~claimant are presented for reconciliation at the same~~
15 ~~time;~~
- 16 ~~(8) Aiding, or agreeing or attempting to aid, soliciting,~~
17 ~~or conspiring with any person who engages in an~~
18 ~~unlawful act as defined under this section; or~~
- 19 ~~(9) Knowingly making, or causing or permitting to be made,~~
20 ~~any false statements or claims by, or on behalf of,~~
21 ~~any person or persons during an official proceeding as~~
22 ~~defined by section 710 1000.~~



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

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

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

9 ~~(3) Misdemeanor if the value of the benefits, recovery, or~~
10 ~~compensation obtained or attempted to be obtained is~~
11 ~~\$300 or less.~~

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

18 ~~(d) A person, if acting without malice, shall not be~~
19 ~~subject to civil liability for providing information, including~~
20 ~~filing a report, furnishing oral or written evidence, providing~~
21 ~~documents, or giving testimony concerning suspected,~~
22 ~~anticipated, or completed public or private insurance fraud to a~~



1 ~~court, the commissioner, the insurance fraud investigations~~
2 ~~unit, the National Association of Insurance Commissioners, any~~
3 ~~federal, state, or county law enforcement or regulatory agency,~~
4 ~~or another insurer if the information is provided only for the~~
5 ~~purpose of preventing, investigating, or prosecuting insurance~~
6 ~~fraud, except if the person commits perjury.~~

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

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

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

18 ~~["~~§432D-18.5~~ Insurance fraud; penalties. (a) A person~~
19 ~~commits the offense of insurance fraud if the person acts or~~
20 ~~omits to act with intent to obtain benefits or recovery or~~
21 ~~compensation for services provided, or provides legal assistance~~



1 ~~or counsel with intent to obtain benefits or recovery, through~~
2 ~~the following means:~~

3 ~~(1) Knowingly presenting, or causing or permitting to be~~
4 ~~presented, with the intent to defraud, any false~~
5 ~~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~~
10 ~~injury, including presenting multiple claims to more~~
11 ~~than one insurer, except when these multiple claims~~
12 ~~are 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;~~



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

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

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

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

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

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



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

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

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

21 ~~(e) This section shall not supersede any other law~~
22 ~~relating to theft, fraud, or deception. Insurance fraud may be~~



1 ~~prosecuted under this section, or any other applicable section,~~
2 ~~and may be enjoined by a court of competent jurisdiction.~~

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

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

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

15 No officer or employee of the State having tenure shall
16 suffer any loss of salary, seniority, prior service credit,
17 vacation, sick leave, or other employee benefit or privilege as
18 a consequence of this Act, and such officer or employee may be
19 transferred or appointed to a civil service position without the
20 necessity of examination; provided that the officer or employee
21 possesses the minimum qualifications for the position to which
22 transferred or appointed; and provided that subsequent changes



1 in status may be made pursuant to applicable civil service and
2 compensation laws.

3 An officer or employee of the State who does not have
4 tenure and who may be transferred or appointed to a civil
5 service position as a consequence of this Act shall become a
6 civil service employee without the loss of salary, seniority,
7 prior service credit, vacation, sick leave, or other employee
8 benefits or privileges and without the necessity of examination;
9 provided that such officer or employee possesses the minimum
10 qualifications for the position to which transferred or
11 appointed.

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

20 SECTION 12. All appropriations, records, equipment,
21 machines, files, supplies, contracts, books, papers, documents,
22 maps, and other personal property heretofore made, used,



Report Title:

Insurance Fraud

Description:

Expands the authority of the Insurance Division over insurance fraud beyond motor vehicle insurance cases to all lines of insurance except workers' compensation.

