
A BILL FOR AN ACT

RELATING TO INSURANCE FRAUD.

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

1 SECTION 1. The legislature recognizes that insurance fraud
2 is a significant problem in Hawaii. The legislature finds that
3 to combat insurance fraud, not only is it necessary to deter
4 persons from committing insurance fraud by imposing substantial
5 fines, but it is also important to provide additional personnel
6 and resources to facilitate the prosecution of insurance fraud.

7 In addition, the jurisdiction of the insurance fraud
8 investigations unit of the department of commerce and consumer
9 affairs is currently limited to investigating and prosecuting
10 motor vehicle insurance matters only. The legislature finds
11 that the unit's jurisdiction should also be expanded to allow
12 the unit to address insurance fraud in workers' compensation.

13 The purpose of this Act is to improve the ability of the
14 insurance fraud investigations unit of the department of
15 commerce and consumer affairs to deter insurance fraud by:

16 (1) Expanding the unit's jurisdiction to include insurance
17 fraud in workers' compensation cases; and



1 (2) Appropriating funds for additional personnel and
2 resources within the unit to combat insurance fraud.

3 SECTION 2. Chapter 431, Hawaii Revised Statutes, is
4 amended by adding two new sections to article 2 to be
5 appropriately designated and to read as follows:

6 "§431:2-A Insurance fraud investigations unit; deposit
7 into compliance resolution fund; funding. (a) There is
8 established in the insurance division an insurance fraud
9 investigations unit.

10 (b) The purpose of the insurance fraud investigations unit
11 shall be to conduct a statewide program for the prevention,
12 investigation, and prosecution of insurance fraud cases and
13 violations relating to insurance fraud arising from article 10C
14 of this chapter and chapter 386. The insurance fraud
15 investigations unit may also review and take appropriate
16 disciplinary and administrative action on complaints relating to
17 insurance fraud arising from article 10C of this chapter and
18 chapter 386.

19 (c) The unit shall employ or retain, by contract or
20 otherwise, attorneys, investigators, investigator assistants, and
21 other support staff as necessary to promote the effective and
22 efficient conduct of the unit's activities. Notwithstanding any



1 other law to the contrary, the attorneys may represent the State
2 in any judicial or administrative proceeding to enforce all
3 applicable state laws relating to insurance fraud, including but
4 not limited to criminal prosecutions, administrative actions,
5 disciplinary actions, and actions for declaratory and injunctive
6 relief. Investigators may serve process and apply for and
7 execute search warrants pursuant to chapter 803 and the rules of
8 court but shall not otherwise have the powers of a police officer
9 or deputy sheriff. The commissioner may hire such employees, who
10 shall not be subject to chapter 76.

11 (d) All moneys that have been recovered by the department
12 of commerce and consumer affairs as a result of prosecuting
13 insurance fraud violations pursuant to this section, including
14 civil fines, criminal fines, administrative fines, and
15 settlements, but not including restitution made pursuant to
16 section 431:2-B or 386-98, shall be deposited into the compliance
17 resolution fund established pursuant to section 26-9(o).

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

21 **§431:2-B Insurance fraud; penalties.** (a) A person
22 commits the offense of insurance fraud if the person acts or



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

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

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

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

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

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

19 (6) Knowingly presenting, or causing or permitting to be
20 presented, multiple claims for payment of the same
21 health care benefit, except when these multiple claims
22 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) A violation of subsection (a) is a criminal offense
15 and shall constitute a:

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

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



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

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

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



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

19 (h) An insurer, or the insurer's employee or agent, having
20 determined that there is reason to believe that a claim is being
21 made in violation of this section, shall provide to the
22 insurance fraud investigations unit within sixty days of that



1 determination, information, including documents and other
2 evidence, regarding the claim in the form and manner prescribed
3 by the unit. Information provided pursuant to this subsection
4 shall be protected from public disclosure to the extent
5 authorized by chapter 92F and section 431:2-209; provided that
6 the unit may release the information in an administrative or
7 judicial proceeding to enforce this section, to a federal,
8 state, or local law enforcement or regulatory authority, to the
9 National Association of Insurance Commissioners, or to an
10 insurer aggrieved by the claim reasonably believed to violate
11 this section."

12 SECTION 3. Section 386-98, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§386-98 **Fraud violations and penalties.** (a) A
15 [~~fraudulent insurance act, under this chapter, shall include~~
16 ~~acts or omissions committed by any person who intentionally or~~
17 ~~knowingly]~~ person commits the offense of insurance fraud if the
18 person acts or omits to act [se as] with intent to obtain
19 benefits, deny benefits, obtain benefits compensation for
20 services provided, or provides legal assistance or counsel to
21 obtain benefits [or recovery through fraud or deceit by doing



1 ~~the following~~], deny benefits, or obtain benefits compensation
2 through the following means:

- 3 (1) [~~Presenting~~], Knowingly presenting, or causing or
4 permitting to be presented, any false information on
5 an application;
- 6 (2) [~~Presenting~~], Knowingly presenting, or causing or
7 permitting to be presented, any false [~~or fraudulent~~]
8 claim for the payment of a loss;
- 9 (3) [~~Presenting~~] Knowingly presenting, or causing or
10 permitting to be presented, multiple claims for the
11 same loss or injury, including presenting multiple
12 claims to more than one insurer, except when these
13 multiple claims are appropriate [~~and each insurer is~~
14 ~~notified immediately in writing of all other claims~~
15 ~~and insurers~~];
- 16 (4) [~~Making~~], Knowingly making, or causing or permitting
17 to be made, any false [~~or fraudulent~~] claim for
18 payment or denial of a health care benefit;
- 19 (5) [~~Submitting~~] Knowingly submitting, or causing or
20 permitting to be submitted, a claim for a health care
21 benefit that was not used by, or provided on behalf
22 of, the claimant;



- 1 (6) ~~[Presenting]~~ Knowingly presenting, or causing or
2 permitting to be presented, multiple claims for
3 payment of the same health care benefit~~[,]~~, except
4 when these multiple claims are appropriate;
- 5 (7) ~~[Presenting]~~ Knowingly presenting, or causing or
6 permitting to be presented, for payment any
7 undercharges for health care benefits on behalf of a
8 specific claimant unless any known overcharges for
9 health care benefits for that claimant are presented
10 for reconciliation at ~~[that]~~ the same time;
- 11 (8) Misrepresenting or concealing a material fact;
- 12 (9) Fabricating, altering, concealing, making a false
13 entry in, or destroying a document;
- 14 (10) ~~[Making,]~~ Knowingly making, or causing or permitting
15 to be made, any false ~~[or fraudulent]~~ statements with
16 regard to entitlements or benefits, with the intent to
17 discourage an injured employee from claiming benefits
18 or pursuing a workers' compensation claim; or
- 19 (11) ~~[Making,]~~ Knowingly making, or causing to be made, any
20 false ~~[or fraudulent]~~ statements or claims by, or on
21 behalf of, a client with regard to obtaining legal
22 recovery or benefits.



1 (b) No employer shall wilfully make a false statement or
2 representation to avoid the impact of past adverse claims
3 experience through change of ownership, control, management, or
4 operation to directly obtain any workers' compensation insurance
5 policy.

6 (c) It shall be inappropriate for any discussion on
7 benefits, recovery, or settlement to include the threat or
8 implication of criminal prosecution. Any threat or implication
9 shall be immediately referred in writing to:

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

16 (d) An offense under subsections (a) and (b) shall
17 constitute a:

- 18 (1) Class C felony if the value of the moneys obtained or
19 denied is not less than \$2,000;
20 (2) Misdemeanor if the value of the moneys obtained or
21 denied is less than \$2,000; or



1 (3) Petty misdemeanor if the providing of false
2 information did not cause any monetary loss.
3 Any person subject to a criminal penalty under this section
4 shall be ordered by a court to make restitution to an insurer or
5 any other person for any financial loss sustained by the insurer
6 or other person caused by the fraudulent act.

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

- 14 (1) A fine of not more than \$10,000 for each violation;
15 (2) Suspension or termination of benefits in whole or in
16 part;
17 (3) Suspension or disqualification from providing medical
18 care or services, vocational rehabilitation services,
19 and all other services rendered for payment under this
20 chapter;



1 (4) Suspension or termination of payments for medical,
2 vocational rehabilitation, and all other services
3 rendered under this chapter;

4 (5) Recoupment by the insurer of all payments made for
5 medical care, medical services, vocational
6 rehabilitation services, and all other services
7 rendered for payment under this chapter; and

8 (6) Reimbursement of attorney's fees and costs of the
9 party or parties defrauded.

10 (f) With respect to the administrative penalties set forth
11 in subsection (e), no penalty shall be imposed except upon
12 consideration of a written complaint that specifically alleges a
13 violation of this section occurring within two years of the date
14 of said complaint. A copy of the complaint specifying the
15 alleged violation shall be served promptly upon the person
16 charged. The director or board shall issue, where a penalty is
17 ordered, a written decision stating all findings following a
18 hearing held not fewer than twenty days after written notice to
19 the person charged. Any person aggrieved by the decision may
20 appeal the decision under sections 386-87 and 386-88.

21 (g) The insurance fraud investigations unit of the
22 insurance division of the department of commerce and consumer



1 affairs, established pursuant to section 431:2-A, may initiate
2 investigations, prosecutions, and disciplinary and
3 administrative actions to enforce this section, including, but
4 not limited to, workers' compensation fraud relating to self-
5 insured employers."

6 SECTION 4. Section 431:10C-307.7, Hawaii Revised Statutes,
7 is repealed.

8 [~~§431:10C-307.7 Insurance fraud; penalties. (a) A~~
9 ~~person commits the offense of insurance fraud if the person acts~~
10 ~~or omits to act with intent to obtain benefits or recovery or~~
11 ~~compensation for services provided, or provides legal assistance~~
12 ~~or counsel with intent to obtain benefits or recovery, through~~
13 ~~the following means:~~

14 ~~(1) Knowingly presenting, or causing or permitting to be~~
15 ~~presented, any false information on a claim;~~
16 ~~(2) Knowingly presenting, or causing or permitting to be~~
17 ~~presented, any false claim for the payment of a loss;~~
18 ~~(3) Knowingly presenting, or causing or permitting to be~~
19 ~~presented, multiple claims for the same loss or~~
20 ~~injury, including presenting multiple claims to more~~
21 ~~than one insurer, except when these multiple claims~~
22 ~~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 other~~
15 ~~person for any financial loss sustained by the insurer or other~~
16 ~~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, or giving~~
21 ~~testimony concerning suspected, anticipated, or completed~~
22 ~~insurance fraud to a court, the commissioner, the insurance fraud~~



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

7 ~~(e) This section shall not supersede any other law relating~~
8 ~~to theft, fraud, or deception. Insurance fraud may be prosecuted~~
9 ~~under this section, or any other applicable section, and may be~~
10 ~~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 person~~
15 ~~has made restitution under subsection (e).~~

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

21 ~~"For your protection, Hawaii law requires you to be informed that~~
22 ~~presenting a fraudulent claim for payment of a loss or benefit is~~



1 ~~a crime punishable by fines or imprisonment, or both." The~~
2 ~~absence of such a warning in any application or claim form shall~~
3 ~~not constitute a defense to a charge of insurance fraud under~~
4 ~~this section.~~

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

20 SECTION 5. Section 431:10C-307.8, Hawaii Revised Statutes,
21 is repealed.



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~~



1 ~~and take appropriate action on complaints relating to insurance~~
2 ~~fraud."]~~

3 SECTION 6. There is appropriated out of the compliance
4 resolution fund of the State of Hawaii the sum of \$ or
5 so much thereof as may be necessary for fiscal year 2007-2008
6 and the same sum or so much thereof as may be necessary for
7 fiscal year 2008-2009 to provide additional personnel and
8 resources for the insurance fraud investigations unit of the
9 insurance division of the department of commerce and consumer
10 affairs to prosecute insurance fraud.

11 The sums appropriated shall be expended by the department
12 of commerce and consumer affairs for the purposes of this Act.

13 SECTION 7. In codifying the new sections added by section
14 2 of this Act, the revisor of statutes shall substitute
15 appropriate section numbers for the letters used in designating
16 the new sections in this Act.

17 SECTION 8. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 9. This Act shall take effect on July 1, 2007;
20 provided that on July 1, 2010, this Act shall be repealed and
21 sections 386-98, 431:10C-307.7, and 431:10C-307.8, Hawaii



- 1 Revised Statutes, shall be reenacted in the form in which they
- 2 read on the day before the effective date of this Act.



Report Title:

Insurance Fraud Investigations Unit

Description:

Expands the department of commerce and consumer affairs' jurisdiction over insurance fraud to include workers' compensation cases, until July 1, 2010. Appropriates funds for additional personnel and resources within the department to combat insurance fraud. (HB88 HD1)

