
A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1 SECTION 1. Insurance fraud reportedly costs every
2 household in the United States an average of \$500 per year. In
3 Hawaii, the cost of motor vehicle insurance fraud is estimated
4 to be over \$164 per household annually. In recognition of the
5 impact that fraud has on the cost of motor vehicle insurance,
6 the legislature enacted Act 251, Session Laws of Hawaii 1997, to
7 establish an insurance fraud investigations unit and violations
8 and penalties for motor vehicle insurance fraud. Act 155,
9 Session Laws of Hawaii 1998, was enacted the following year to
10 clarify the penalties for the offense of motor vehicle insurance
11 fraud, and enhance and clarify the powers and purpose of the
12 insurance fraud investigations unit.

13 Insurance fraud has also increasingly impacted costs within
14 the health insurance industry with estimated healthcare fraud
15 losses reported at three to fourteen per cent of the total
16 amount of \$1,200,000,000,000 in annual national healthcare
17 costs. This is equivalent to approximately \$36,000,000,000 to



1 \$144,000,000,000 annually. In Hawaii, based on the conservative
2 estimate that insurance fraud amounts to three per cent of
3 annual Hawaii healthcare costs, health insurance fraud causes
4 losses exceeding \$60,000,000 annually. Realizing that insurance
5 fraud is a growing problem in the area of health insurance, the
6 legislature passed Act 125, Session Laws of Hawaii 2003, to
7 provide health insurance fraud provisions under chapters 431,
8 article 10A; 432, article 1; and 432D, Hawaii Revised Statutes.
9 However, none of these penalty provisions clearly assigns
10 responsibility for the investigation and prosecution of
11 insurance fraud cases to a specific law enforcement agency.

12 The legislature finds that no line or area of insurance is
13 exempt from insurance fraud. Hawaii's insurance fraud laws
14 should be expanded to include all lines of insurance, except for
15 workers' compensation, rather than be limited to administrative,
16 civil, and criminal penalties for insurance fraud cases relating
17 to only a select few lines of insurance.

18 The purpose of this Act is to:

19 (1) Discontinue the existing insurance fraud
20 investigations unit under section 431:10C-307.8,
21 Hawaii Revised Statutes, and establish a new insurance
22 fraud investigations branch to investigate and



1 prosecute all lines of insurance fraud, except for
2 workers' compensation under chapter 386, Hawaii
3 Revised Statutes;

4 (2) Expand administrative, civil, and criminal penalties
5 for offenses of insurance fraud in all lines of
6 insurance, except for workers' compensation under
7 chapter 386, Hawaii Revised Statutes, and for
8 different types of insurance fraud, including
9 fraudulent applications and sales; and

10 (3) Deposit all fines and settlements resulting from
11 successful insurance fraud prosecutions into the
12 compliance resolution fund under section 26-9(o),
13 Hawaii Revised Statutes, to assist the insurance fraud
14 investigations branch to cover its operation costs.

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

18 **"PART . INSURANCE FRAUD**

19 **§431:2-A Definitions.** As used in this part:

20 "Branch" means the insurance fraud investigations branch of
21 the insurance division under the department of commerce and
22 consumer affairs.



1 "Insurance policy" means a contract issued by an insurer or
2 other licensee.

3 "Licensee" means an entity licensed under and governed by
4 title 24, including an insurer governed by chapter 431, a mutual
5 benefit society governed by chapter 432, article 1, a fraternal
6 benefit society governed by chapter 432, article 2, or a health
7 maintenance organization governed by chapter 432D, and their
8 respective agents and employees engaged in the business of the
9 licensee.

10 "Person" means any individual, company, association,
11 organization, group, partnership, business, trust, or
12 corporation, excluding insurers, as defined in section 431:1-
13 202, and other licensees, as defined in this part.

14 **§431:2-B Insurance fraud investigations branch.** (a).

15 There is established in the insurance division an insurance
16 fraud investigations branch.

17 (b) The branch shall:

18 (1) Conduct a statewide program for the prevention of
19 fraud in all lines of insurance except workers'
20 compensation;

21 (2) Notwithstanding any other law to the contrary,
22 investigate and prosecute in administrative hearings



1 and courts of competent jurisdiction all persons
2 involved in fraud violations arising out of any line
3 of insurance except workers' compensation; and

4 (3) Promote public and industry-wide education about
5 insurance fraud.

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

8 (d) The commissioner shall employ or retain, by contract
9 or otherwise, attorneys, investigators, investigator assistants,
10 auditors, accountants, physicians, health care professionals,
11 paralegals, consultants, experts, and other professional,
12 technical, and support staff, as necessary, to promote the
13 effective and efficient conduct of the activities of the branch.
14 The commissioner may hire employees without regard to chapter
15 76.

16 (e) Notwithstanding any other law to the contrary, an
17 attorney employed or retained by the branch may represent the
18 State in any criminal, civil, or administrative proceeding to
19 enforce all applicable state laws relating to insurance fraud,
20 including criminal prosecutions, disciplinary actions, and
21 actions for declaratory and injunctive relief. Each attorney
22 representing the State in a proceeding shall be designated by



1 the attorney general as a special deputy attorney general. The
2 decision to designate an attorney as a special deputy attorney
3 general shall be solely within the discretion of the attorney
4 general.

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

8 (g) Funding for the branch shall come from the compliance
9 resolution fund established under section 26-9(o).

10 **§431:2-C Insurance fraud; criminal penalties.** (a) A
11 person commits the offense of insurance fraud if, with respect
12 to any line of insurance other than workers' compensation, the
13 person intentionally or knowingly:

14 (1) Misrepresents or conceals material facts, opinions,
15 intention, or law to obtain or attempt to obtain
16 coverage, benefits, recovery, or compensation for
17 services provided in the following situations or
18 circumstances:

19 (A) When presenting, or causing or permitting to be
20 presented:

21 (i) An application, whether written, typed, or
22 transmitted through electronic media, for



- 1 the issuance or renewal of an insurance
2 policy or reinsurance contract;
- 3 (ii) False information on a claim for payment
4 whether typed, written, or transmitted
5 through electronic media;
- 6 (iii) A claim for the payment of a loss;
- 7 (iv) Improper multiple duplicative claims for the
8 same loss or injury, including knowingly
9 presenting these multiple and duplicative
10 claims to more than one insurer;
- 11 (v) Any claim for payment of a health care
12 benefit;
- 13 (vi) A claim for a health care benefit that was
14 not used by, or provided on behalf of, the
15 claimant;
- 16 (vii) Improper multiple and duplicative claims for
17 payment of the same health care benefit;
- 18 (viii) For payment, any undercharges for benefits
19 on behalf of a specific claimant unless any
20 known overcharges for benefits under this
21 article for that claimant are presented for
22 reconciliation at the same time;



- 1 (ix) To a person, insurer, or other licensee
- 2 false, incomplete, or misleading information
- 3 to obtain coverage or payment otherwise
- 4 available under an insurance policy; and
- 5 (x) To a person or producer, information about a
- 6 person's status as a licensed producer that
- 7 induces a person or insurer to purchase an
- 8 insurance policy or reinsurance contract;
- 9 (B) When fabricating, altering, concealing, making an
- 10 entry in, or destroying a document whether typed,
- 11 written, or produced through an audio or video
- 12 tape or electronic media;
- 13 and
- 14 (C) When making, or causing or permitting to be made,
- 15 any statement, either typed, written, or produced
- 16 through audio or video tape or electronic media,
- 17 or claims by the person or on behalf of a person
- 18 with regard to obtaining legal recovery or
- 19 benefits;
- 20 (2) Aids, agrees, or attempts to aid, solicit, or conspire
- 21 with any person who engages in an unlawful act as
- 22 defined under this section; or



1 (3) Makes, causes, or permits to be presented, any false
2 statements or claims by any person or on behalf of any
3 person during an official proceeding as defined by
4 section 710-1000.

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

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

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

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

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



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

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

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

14 (b) If a person is found to have knowingly committed
15 insurance fraud, the commissioner may assess any or all of the
16 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" shall
12 have the same meaning as defined in section 702-206.

13 **§431:2-F Administrative procedures.** (a) An
14 administrative penalty for insurance fraud may be imposed based
15 upon a judgment by a court of competent jurisdiction or upon an
16 order by the commissioner.

17 (b) The commissioner shall hold a hearing in accordance
18 with chapter 91, prior to the imposition of any administrative
19 remedy.

20 **§431:2-G Acceptance of payment.** A provider's failure to
21 dispute a reduced payment by an insurer shall not constitute an
22 implied admission that a fraudulent billing had been submitted.



1 **§431:2-H Civil cause of action for insurance fraud;**

2 **exemption.** (a) An insurer or other licensee shall have a civil
3 cause of action to recover payments or benefits from any person
4 who has committed insurance fraud. No recovery shall be allowed
5 if the person has made restitution under section 431:2-D or
6 431:2-E(b)(1).

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

15 (1) A court;

16 (2) The commissioner;

17 (3) The insurance fraud investigations branch;

18 (4) The National Association of Insurance Commissioners;

19 (5) The National Insurance Crime Bureau;

20 (6) Any federal, state, or county law enforcement or
21 regulatory agency; or

22 (7) Another insurer or other licensee,



1 if the information is provided for the purpose of preventing,
2 investigating, or prosecuting insurance fraud, except if the
3 person commits perjury.

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

9 **§431:2-I Mandatory reporting.** (a) Within sixty days of
10 an insurer or other licensee's employee or agent discovering
11 credible information indicating that a violation of section
12 431:2-C is occurring or has occurred or as soon thereafter as
13 practicable, the insurer or licensee shall provide to the
14 insurance fraud investigations branch the information, including
15 documents and other evidence, regarding the alleged insurance
16 fraud. The branch shall work with the insurer or licensee to
17 determine what information shall be provided.

18 (b) Information provided pursuant to this section shall be
19 protected from public disclosure to the extent authorized by
20 chapter 92F and section 431:2-209; provided that the branch may
21 release the information in an administrative or judicial
22 proceeding to enforce this part, to federal, state, or local law



1 enforcement or regulatory authorities, the National Association
2 of Insurance Commissioners, the National Insurance Crime Bureau,
3 or an insurer or other licensee aggrieved by the alleged
4 insurance fraud.

5 **§431:2-J Deposit into the compliance resolution fund.** All
6 moneys that have been recovered by the department of commerce
7 and consumer affairs as a result of prosecuting insurance fraud
8 pursuant to this part, including civil fines, criminal fines,
9 administrative fines, and settlements, but not including
10 restitution made pursuant to section 431:2-D, 431:2-E(b)(1), or
11 431:2-H, shall be deposited into the compliance resolution fund
12 established pursuant to section 26-9(o)."

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

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



1 provided by this code or the penal code of the Hawaii
2 Revised Statutes.

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

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

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

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

19 "(d) When the commissioner, through the insurance fraud
20 investigations [~~unit,~~] branch, is conducting an investigation of
21 possible [~~violations of section 431:10C-307.7,~~] insurance fraud
22 pursuant to part _____, the commissioner shall pay to a financial



1 institution that is served a subpoena issued under this section
2 a fee for reimbursement of [~~such costs as are necessary and~~
3 ~~which have been~~] costs necessarily and directly incurred in
4 searching for, reproducing, or transporting books, papers,
5 documents, or other objects designated by the subpoena.

6 Reimbursement shall be paid at a rate not to exceed the rate set
7 forth in section 28-2.5(d)."

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

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

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

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



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



1 ~~overcharges for benefits under this article for that~~
2 ~~claimant are presented for reconciliation at the same~~
3 ~~time;~~

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

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

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

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

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

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



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

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

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



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

6 SECTION 7. 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~~
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, or giving~~
21 ~~testimony concerning suspected, anticipated, or completed~~
22 ~~insurance fraud to a court, the commissioner, the insurance~~



1 ~~fraud 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~~
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 ~~(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~~
22 ~~that presenting a fraudulent claim for payment of a loss or~~



1 ~~benefit is a crime punishable by fines or imprisonment, or~~
2 ~~both." The absence of such a warning in any application or~~
3 ~~claim form shall not constitute a defense to a charge of~~
4 ~~insurance fraud under 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~~
8 ~~insurance 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,~~
16 ~~state, or local law enforcement or regulatory authority, to the~~
17 ~~National Association of Insurance Commissioners, or to an~~
18 ~~insurer aggrieved by the claim reasonably believed to violate~~
19 ~~this section."]~~

20 SECTION 8. 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~~
3 ~~fraud 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~~
15 ~~officer or deputy sheriff. The commissioner may hire such~~
16 ~~employees not 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 9. Section 432:1-106, Hawaii Revised Statutes, is
4 repealed.

5 ~~["~~§432:1-106~~ Insurance fraud; penalties. (a) A person~~
6 ~~commits the offense of insurance fraud if the person acts or~~
7 ~~omits to act with intent to obtain benefits or recovery or~~
8 ~~compensation for services provided, or provides legal assistance~~
9 ~~or counsel with intent to obtain benefits or recovery, through~~
10 ~~the following means:~~

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

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

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

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



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



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

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

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

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

16 ~~(d) A person, if acting without malice, shall not be~~
17 ~~subject to civil liability for providing information, including~~
18 ~~filing a report, furnishing oral or written evidence, providing~~
19 ~~documents, or giving testimony concerning suspected,~~
20 ~~anticipated, or completed public or private insurance fraud to a~~
21 ~~court, the commissioner, the insurance fraud investigations~~
22 ~~unit, the National Association of Insurance Commissioners, any~~



1 ~~federal, state, or county law enforcement or regulatory agency,~~
2 ~~or another insurer if the information is provided only for the~~
3 ~~purpose of preventing, investigating, or prosecuting insurance~~
4 ~~fraud, except if the person commits perjury.~~

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

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

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

16 ~~["~~[§432D-18.5] Insurance fraud; penalties.~~ (a) A person~~
17 ~~commits the offense of insurance fraud if the person acts or~~
18 ~~omits to act with intent to obtain benefits or recovery or~~
19 ~~compensation for services provided, or provides legal assistance~~
20 ~~or counsel with intent to obtain benefits or recovery, through~~
21 ~~the following means:~~



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



1 ~~overcharges for benefits under this article for that~~
2 ~~claimant are presented for reconciliation at the same~~
3 ~~time;~~

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

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

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

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

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

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



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

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

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



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

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

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

13 Any employee who, prior to the effective date of this Act,
14 was exempt from civil service and who may be transferred as a
15 consequence of this Act, may continue to retain the employee's
16 exempt status, but shall not be appointed to a civil service
17 position because of this Act. No employee who is transferred by
18 this Act shall suffer any loss of prior service credit, any
19 vacation and sick leave credits previously earned, or other
20 employee benefits or privileges as a consequence of this Act.
21 The director may prescribe the duties and qualifications of such



1 employees and fix their salaries without regard to chapter 76,
2 Hawaii Revised Statutes.

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

10 SECTION 13. This Act does not affect rights and duties
11 that matured, penalties that were incurred, and proceedings that
12 were begun, before its effective date. The legislature intends
13 that cases arising from offenses that are committed before the
14 statutory provisions set out in sections 6, 7, 8, 9, and 10 of
15 this Act are repealed, but that are charged or tried thereafter,
16 shall not be terminated by the repeal because the new sections
17 created by this Act substantially reenact the repealed
18 provisions and are not ameliorative.

19 SECTION 14. In codifying the new sections added by section
20 2 of this Act, the revisor of statutes shall substitute
21 appropriate section numbers for the letters used in designating
22 the new sections in this Act.



1 SECTION 15. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 16. This Act shall take effect on July 1, 2020.



Report Title:

Insurance Fraud

Description:

Discontinues the insurance division's existing insurance fraud investigations unit and establishes a new insurance fraud investigations branch to prevent, investigate, and prosecute insurance fraud in all lines of insurance except workers' compensation. (SB2313 HD2)

