

S.B. NO. 1412

JAN 22 2007

A BILL FOR AN ACT

RELATING TO INSURANCE FRAUD.

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

1 SECTION 1. Insurance fraud is reported to cost every
2 household in the United States an average of \$500 per year. In
3 Hawaii, the cost of motor vehicle insurance fraud alone has been
4 estimated to be over \$164 annually per household. In
5 recognition of the impact that fraud has on the cost of motor
6 vehicle insurance, Act 251, Session Laws of Hawaii 1997, was
7 enacted to establish an insurance fraud investigations unit, and
8 motor vehicle insurance fraud violations, and penalties. Act
9 155 and Act 275, Session Laws of Hawaii 1998, were enacted the
10 following year to clarify the penalties for the offense of motor
11 vehicle insurance fraud and enhanced and clarified the powers
12 and purpose of the insurance fraud investigations unit to combat
13 motor vehicle insurance fraud.

14 Insurance fraud also has increasingly affected costs within
15 the health insurance industry. Industry healthcare fraud losses
16 are estimated at three to fourteen per cent of the
17 \$1,200,000,000,000 in annual national healthcare costs. This is

1 equivalent to approximately \$36,000,000,000 to \$144,000,000,000
2 annually. In Hawaii, based on the conservative estimate that
3 insurance fraud amounts to three per cent of annual Hawaii
4 healthcare costs, health insurance fraud causes losses that
5 exceed \$60,000,000 annually. Realizing that insurance fraud is
6 a growing problem in the area of health insurance, health
7 insurance fraud provisions were enacted in Act 125, Session Laws
8 of Hawaii 2003. None of the healthcare insurance fraud
9 provisions clearly designates a specific law enforcement agency
10 to be responsible for the investigation and prosecution of
11 insurance fraud violations.

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

19 The purpose of this Act is to:

20 (1) Establish the insurance fraud investigations branch to
21 replace the existing insurance fraud investigations
22 unit established in Act 251, which was expanded by

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- 1 Acts 155 and 275, and empower it to investigate and
 2 prosecute insurance fraud in all lines of insurance;
- 3 (2) Establish administrative, civil, and criminal
 4 penalties for offenses of insurance fraud in all lines
 5 of insurance and for different types of insurance
 6 fraud, including fraudulent applications and sales;
 7 and
- 8 (3) Establish that fines and settlements resulting from
 9 successful insurance fraud prosecutions are to be
 10 deposited into the compliance resolution fund to help
 11 the insurance fraud investigations branch to cover
 12 some of the cost of its own operation to prevent,
 13 investigate, and prosecute insurance fraud.

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

17 "PART . INSURANCE FRAUD

18 §431:2-A Definitions. As used in this part:

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

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

1 "Licensee" for the purpose of this part, means an entity
2 licensed under and governed by chapter 431, and including but
3 not limited to mutual benefit societies governed by article 1 of
4 chapter 432, fraternal benefit societies governed by article 2
5 of chapter 432, and health maintenance organizations governed by
6 chapter 432D, and their respective agents and employees engaged
7 in the business of the licensee.

8 "Person" means any individual, company, association,
9 organization, group, partnership, business, trust, or
10 corporation; but shall exclude insurer, as defined in section
11 431:1-202, and other licensees, as defined in this part.

12 **§431:2-B Insurance fraud investigations branch.** (a) There
13 is established in the insurance division the insurance fraud
14 investigations branch.

15 (b) The branch shall:

16 (1) Conduct a statewide program for the prevention of
17 insurance fraud relating to, but not limited to, title
18 24;

19 (2) Notwithstanding any other law to the contrary,
20 investigate and prosecute in administrative hearings
21 and courts of competent jurisdiction all persons or
22 insurers involved in insurance fraud violations

1 arising out of but not limited to chapters 431, 432,
2 and 432D; and

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

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

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

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

1 attorney as a special deputy attorney general shall be solely
2 within the discretion of the attorney general.

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

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

10 **§431:2-C Insurance fraud.** (a) A person commits the
11 offense of insurance fraud if the person intentionally or
12 knowingly misrepresents or conceals material facts, opinions,
13 intention, or law in order to obtain or attempt to obtain
14 coverage, benefits, recovery, or compensation for services
15 provided in the following situations or circumstances:

16 (1) When presenting, or causing or permitting to be
17 presented, an application, whether written, typed, or
18 transmitted through electronic media, for the issuance
19 or renewal of an insurance policy or reinsurance
20 contract;

21 (2) When presenting, or causing or permitting to be
22 presented, false information on a claim for payment

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- 1 whether typed, written, or transmitted through
- 2 electronic media;
- 3 (3) When presenting, or causing or permitting to be
- 4 presented, a claim for the payment of a loss;
- 5 (4) When presenting, or causing or permitting to be
- 6 presented, improper multiple duplicative claims for
- 7 the same loss or injury, including knowingly
- 8 presenting such multiple and duplicative claims to
- 9 more than one insurer;
- 10 (5) When presenting, or causing or permitting to be
- 11 presented, any claim for payment of a health care
- 12 benefit;
- 13 (6) When presenting, or causing or permitting to be
- 14 presented, a claim for a health care benefit that was
- 15 not used by, or provided on behalf of, the claimant;
- 16 (7) When presenting, or causing or permitting to be
- 17 presented, improper multiple and duplicative claims
- 18 for payment of the same health care benefit;
- 19 (8) When presenting, or causing or permitting to be
- 20 presented, for payment, any undercharges for benefits
- 21 on behalf of a specific claimant unless any known
- 22 overcharges for benefits under this article for that

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1 claimant are presented for reconciliation at the same
2 time;

3 (9) When fabricating, altering, concealing, making an
4 entry in, or destroying a document whether typed,
5 written, or through an audio or video tape or
6 electronic media;

7 (10) When presenting, or causing or permitting to be
8 presented, to a person, insurer, or other licensee
9 false, incomplete, or misleading information in order
10 to obtain coverage or payment otherwise available
11 under an insurance policy;

12 (11) When presenting, or causing or permitting to be
13 presented, to a person or producer, information about
14 a person's status as a licensed producer that induces
15 a person or insurer to purchase an insurance policy or
16 reinsurance contract; and

17 (12) When making, or causing or permitting to be made, any
18 statement, either typed, written, or through audio or
19 video tape or electronic media, or claims by the
20 person or on behalf of a person with regard to
21 obtaining legal recovery or benefits.

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1 (13) In addition, a person commits the offense of insurance
2 fraud:

3 (A) If the person intentionally or knowingly aids,
4 agrees, or attempts to aid, solicit, or conspire
5 with any person who engages in an unlawful act as
6 defined under this section; or

7 (B) Intentionally or knowingly makes, causes, or
8 permits to be presented, any false statements or
9 claims by any person or on behalf of any person
10 during an official proceeding as defined by
11 section 710-1000.

12 (b) Where the person acting with intent to defraud under
13 section 431:2-C(a) possessed actual knowledge or acted in
14 deliberate ignorance of the truth or falsity of the
15 misrepresentation or concealment of the material facts,
16 opinions, intention, or law, insurance fraud is a:

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

20 (2) Class C felony if the value of the benefits, recovery,
21 or compensation obtained or attempted to be obtained
22 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) This section shall not supersede any other law
5 relating to theft, fraud, or deception. Insurance fraud may be
6 prosecuted under this part, or any other applicable statute or
7 common law, and all such remedies shall be cumulative.

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

10 **§431:2-D Restitution.** Where the ability to make
11 restitution can be demonstrated, any person convicted under this
12 part shall be ordered by a court to make restitution to any
13 insurer, person, or other licensee for any financial loss
14 sustained by that insurer, person, or licensee caused by the act
15 or acts for which the person was convicted.

16 **§431:2-E Insurance fraud; administrative penalties.** (a)
17 In addition to or in lieu of criminal penalties under section
18 431:2-C(b), any person who commits insurance fraud as defined
19 under section 431:2-C, may be subject to the administrative
20 penalties of this section.

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

4 (1) Restitution to any insurer or any other person of
5 benefits or payments fraudulently received or other
6 damages or costs incurred;

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

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

13 (c) Administrative actions brought for insurance fraud
14 under this part shall be brought within six years after the
15 insurance fraud is discovered or by exercise of reasonable
16 diligence should have been discovered and, in any event, no more
17 than ten years after the date on which a violation of this part
18 is committed.

19 (d) For the purpose of this section, "knowingly" means
20 that a person, has actual knowledge of the facts; and

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

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

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

5 **§431:2-F Administrative procedures.** (a) An
6 administrative penalty may be imposed based upon a judgment by a
7 court of competent jurisdiction or upon an order by the
8 commissioner.

9 (b) The commissioner shall hold a hearing in accordance
10 with chapter 91, prior to imposition of any administrative
11 remedy.

12 **§431:2-G Acceptance of payment.** A provider's failure to
13 dispute a reduced payment by an insurer shall not constitute an
14 implied admission that a fraudulent billing had been submitted.

15 **§431:2-H Civil cause of action for insurance fraud;**
16 **exemption.** (a) An insurer or other licensee shall have a civil
17 cause of action to recover payments or benefits from any person
18 who has violated any practice prohibited by section 431:2-C of
19 this part. No recovery shall be allowed if the person has made
20 restitution under section 431:2-D or 431:2-E(b)(1).

21 (b) A person, insurer, or other licensee including an
22 insurer or other licensee's adjusters, bill reviewers,

1 producers, representatives, or common-law agents, if acting
2 without malice, shall not be subject to civil liability for
3 providing information, including filing a report, furnishing
4 oral, written, audio taped, video taped, or electronic media
5 evidence, providing documents, or giving testimony concerning
6 suspected, anticipated, or completed insurance fraud to:

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

18 (c) Civil actions brought for insurance fraud under this
19 part shall be brought within six years after the insurance fraud
20 is discovered or by exercise of reasonable diligence should have
21 been discovered and, in any event, no more than ten years after
22 the date on which a violation of this part is committed.

1 **431:2-I Application notification.** All applications for
2 insurance under title 24 and all claim forms prepared by an
3 insurer, regardless of the means of transmission, shall contain
4 or have attached to them the following or a substantially
5 similar statement in a prominent location and typeface as
6 determined by the insurer: "For your protection, Hawaii law
7 requires you to be informed that presenting a fraudulent
8 application for insurance or a fraudulent claim for payment of a
9 loss or benefit is a crime punishable by a fine, imprisonment,
10 or both." The commissioner may waive this requirement and
11 prescribe an alternative notification if this requirement would
12 result in administrative inefficiency or hardship. The absence
13 of such a warning in any claim form or application shall not
14 constitute a defense to a charge of insurance fraud under this
15 part or a civil cause of action under section 431:2-H.

16 **§431:2-J Mandatory reporting.** (a) Within sixty days of
17 an insurer or other licensee's employee or agent discovering
18 credible information indicating that a violation of section
19 431:2-C is occurring or has occurred or as soon thereafter as
20 practicable, the insurer or licensee shall provide to the
21 insurance fraud investigations branch information, including

1 documents and other evidence, regarding the alleged violation of
2 section 431:2-C.

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

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

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

- 1 "(b) (1) A person who intentionally or knowingly violates,
2 intentionally or knowingly permits any person over
3 whom the person has authority to violate, or
4 intentionally or knowingly aids any person in
5 violating any insurance rule or statute of this State
6 or any effective order issued by the commissioner,
7 shall be subject to any penalty or fine as [~~stated in~~]
8 provided by this code or the penal code of the Hawaii
9 Revised Statutes.
- 10 (2) If the commissioner has cause to believe that any
11 person has violated any penal provision of this code
12 or of other laws relating to insurance, the
13 commissioner may proceed against that person or shall
14 certify the facts of the violation to the public
15 prosecutor of the jurisdiction in which the offense
16 was committed.
- 17 (3) Violation of any provision of this code is punishable
18 by a fine of not less than \$100 nor more than \$10,000
19 per violation, or by imprisonment for not more than
20 one year, or both, in addition to any other penalty or
21 forfeiture provided herein or otherwise by law.

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

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

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

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

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

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

1 ~~["§431:10A-131] Insurance fraud, penalties. (a) A~~
2 ~~person commits the offense of insurance fraud if the person acts~~
3 ~~or omits to act with intent to obtain benefits or recovery or~~
4 ~~compensation for services provided, or provides legal assistance~~
5 ~~or counsel with intent to obtain benefits or recovery, through~~
6 ~~the following means:~~

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

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

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

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

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

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

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

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

4 ~~(3) Misdemeanor if the value of the benefits, recovery, or~~
5 ~~compensation obtained or attempted to be obtained is~~
6 ~~\$300 or less.~~

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

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

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1 ~~purpose of preventing, investigating, or prosecuting insurance~~
2 ~~fraud, except if the person commits perjury.~~

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

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

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

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

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

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

3 ~~(3) Knowingly presenting, or causing or permitting to be~~
4 ~~presented, multiple claims for the same loss or~~
5 ~~injury, including presenting multiple claims to more~~
6 ~~than one insurer, except when these multiple claims~~
7 ~~are appropriate;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 ~~(h) An insurer, or the insurer's employee or agent, having~~
13 ~~determined that there is reason to believe that a claim is being~~
14 ~~made in violation of this section, shall provide to the~~
15 ~~insurance fraud investigations unit within sixty days of that~~
16 ~~determination, information, including documents and other~~
17 ~~evidence, regarding the claim in the form and manner prescribed~~
18 ~~by the unit. Information provided pursuant to this subsection~~
19 ~~shall be protected from public disclosure to the extent~~
20 ~~authorized by chapter 92F and section 431:2-209, provided that~~
21 ~~the unit may release the information in an administrative or~~
22 ~~judicial proceeding to enforce this section, to a federal,~~

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1 ~~state, or local law enforcement or regulatory authority, to the~~
2 ~~National Association of Insurance Commissioners, or to an~~
3 ~~insurer aggrieved by the claim reasonably believed to violate~~
4 ~~this section."]~~

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

7 [~~"§431:10C-307.8 Insurance fraud investigations unit. (a)~~
8 ~~There is established in the insurance division an insurance~~
9 ~~fraud investigations unit.~~

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

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

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

10 ~~"[~~§432:1-106~~] Insurance fraud; penalties. (a) A person~~
11 ~~commits the offense of insurance fraud if the person acts or~~
12 ~~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, with the intent to defraud, any false~~
18 ~~information on a claim;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 ~~[" [§432D-18.5] Insurance fraud; penalties. (a) A person~~
2 ~~commits the offense of insurance fraud if the person acts or~~
3 ~~omits to act with intent to obtain benefits or recovery or~~
4 ~~compensation for services provided, or provides legal assistance~~
5 ~~or counsel with intent to obtain benefits or recovery, through~~
6 ~~the following means:~~

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

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

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

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

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

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

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

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

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

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

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

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

4 ~~(3) Misdemeanor if the value of the benefits, recovery, or~~
5 ~~compensation obtained or attempted to be obtained is~~
6 ~~\$300 or less.~~

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

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

1 ~~purpose of preventing, investigating, or prosecuting insurance~~
2 ~~fraud, except if the person commits perjury.~~

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

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

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

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

19 No officer or employee of the State having tenure shall
20 suffer any loss of salary, seniority, prior service credit,
21 vacation, sick leave, or other employee benefit or privilege as
22 a consequence of this Act, and such officer or employee may be

1 transferred or appointed to a civil service position without the
2 necessity of examination; provided that the officer or employee
3 possesses the minimum qualifications for the position to which
4 transferred or appointed; and provided that subsequent changes
5 in status may be made pursuant to applicable civil service and
6 compensation laws.

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

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

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1 the governor.

2 SECTION 12. In codifying the new sections added by section
3 2 of this Act, the revisor of statutes shall substitute
4 appropriate section numbers for the letters used in designating
5 the new sections in this Act.

6 SECTION 13. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

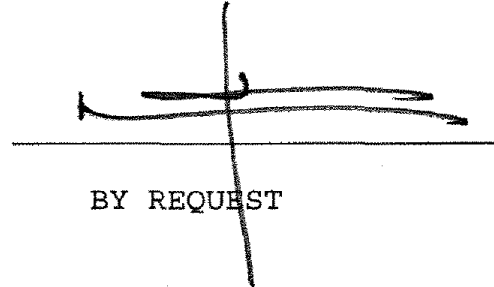
8 SECTION 14. This Act shall take effect on July 1, 2007.

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INTRODUCED BY:



BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE FRAUD.

PURPOSE: To expand the authority of the insurance division's insurance fraud investigations unit to prevent, investigate, and prosecute (both civilly and criminally) insurance fraud relating to all lines of insurance included in title 24, Hawaii Revised Statutes, in order to protect Hawaii's consumers and the insurance industry from the high cost of insurance fraud statewide.

MEANS: Add a new part to article 2 of chapter 431, amend sections 431:2-203(b), 431:2-204(d), and 432:2-102, and repeal sections 431:10A-131, 431:10C-307.7, 431:10C-307.8, 432:1-106, and 432D-18.5, Hawaii Revised Statutes.

JUSTIFICATION: In 1997, the Legislature, finding it necessary to protect Hawaii's citizens from the growing cost of motor vehicle insurance fraud, enacted Act 251, Session Laws of Hawaii 1997. Among other things, Act 251 established the insurance fraud investigations unit in the insurance division and defined insurance fraud violations and penalties applicable to motor vehicle insurance.

In 1998, the Legislature enacted Act 155 and Act 275, Session Laws of Hawaii 1998, which enhanced and clarified the fraud penalty statutes and the powers and purpose of the insurance fraud investigations unit. In 2003, the Legislature enacted Act 125, Session Laws of Hawaii 2003, which recognized that insurance fraud occurs across all lines of insurance, not just motor vehicle insurance, and accordingly, defined insurance fraud offenses and

penalties applicable to health insurance. Despite these developments, the insurance fraud investigations unit's authority to investigate and prosecute remains limited to motor vehicle insurance matters. As a result, although the Legislature passed various laws creating insurance fraud penalties in sections 386-98, 431:10A-131, 431:10C-307.7, 432:1-106, and 432D-18.5, little or no investigation or prosecution has occurred in these non-motor vehicle areas.

This bill provides the insurance fraud investigations unit with the authority and tools it needs to investigate and prosecute insurance fraud for all lines of insurance, not just motor vehicle insurance. The bill accomplishes the foregoing by re-establishing the insurance fraud investigations unit as the "insurance fraud investigations branch" and transferring the provisions governing the offense of insurance fraud and criminal and civil penalties to a new part to be added to article 2 of chapter 431, Hawaii Revised Statutes. This new statute redefines the offense of insurance fraud, provides for both criminal and civil penalties, and applies the new definition and penalties to the entirety of title 24 and thus all lines of insurance, except for workers' compensation, which is located in chapter 386, Hawaii Revised Statutes. Unlike the current insurance fraud statute which limits the offense of insurance fraud to claims only, the new definition for insurance fraud includes all forms of fraud, including fraudulent activities occurring in applications and sales of insurance.

Additionally, this bill amends section 431:2-203, Hawaii Revised Statutes, to allow the commissioner, in cases where the commissioner believes that an individual or business has violated a penal provision of title 24 or any other law relating to

insurance fraud, to take action against the individual or business through the insurance fraud investigations branch or the county prosecutor in whose jurisdiction the fraudulent activity was discovered. Under current language, the commissioner may only take action through the county prosecutor's office.

Finally, this bill establishes that funding for the insurance fraud investigations branch shall come from the compliance resolution fund and mandates that all moneys recovered by the branch as a result of insurance fraud violations, except for restitutions, will be deposited into the compliance resolution fund. This includes all civil, criminal, and administrative fines and settlements. This will allow the insurance fraud investigations branch to help fund some of its costs in preventing, investigating, and prosecuting insurance fraud.

Impact on the public: There should be a positive impact on the public as the insurance division will be allowed to more effectively fight insurance fraud across all lines of insurance and all forms of insurance fraud. Additionally, policyholders will save money from the reduction of fraudulent claims and policies.

Impact on the department and other agencies: This bill will have the positive effect of lessening the workload of other state law enforcement agencies by allowing the insurance fraud investigations branch to take action in preventing, investigating, and prosecuting all types of insurance fraud across all lines of insurance. With the passage of this bill a more comprehensive approach can be taken to deter perpetrators of insurance fraud by demonstrating that no line of insurance will be a safe haven for those who commit insurance fraud. No additional staffing is being requested with

the initial passage of this bill. The insurance division will evaluate additional staffing needs at a future date, should it be determined that additional staffing may result in greater prevention and deterrence in stopping insurance fraud across all lines of insurance.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-106.

OTHER AFFECTED
AGENCIES: Department of the Attorney General

EFFECTIVE DATE: July 1, 2007.