

JAN 22 2007

A BILL FOR AN ACT

RELATING TO SENTENCING OF REPEAT OFFENDERS.

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

1 SECTION 1. Insurance fraud is reported to cost every
2 United States household an average of \$500 per year. In Hawaii,
3 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 155
9 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 enhance and clarify the powers and
12 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 to be as much as 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. Because insurance fraud is a
6 growing problem in the area of health insurance, the legislature
7 enacted health insurance fraud provisions in Act 125, Session
8 Laws of Hawaii 2003. Similar fraud provisions are in place for
9 workers' compensation insurance.

10 Nationally, many repeat offender criminals and organized
11 crime entities are now engaging in various insurance fraud
12 schemes as a way to generate quick and safe money to fund other
13 criminal endeavors. More and more criminals are turning to
14 white collar crime such as insurance fraud and identity theft as
15 a way of defrauding and stealing from both the government and
16 the general public.

17 In Hawaii, insurance fraud is not listed as one of the
18 class C felony crimes that is covered as one of the repeat
19 offender offenses. Knowing that many criminals and criminal
20 entities utilize insurance fraud as a way to fund often more
21 dangerous or violent crimes and that many white collar criminals
22 see this as a crime where the punishment is minimal, action

1 should be taken to toughen the penalties for those who engage in
2 repeated attempts to commit insurance fraud.

3 The purpose of this Act is to amend the sentencing of
4 repeat offenders to include the insurance fraud penalty
5 provisions located in chapters 386, 431, 432, and 432D, Hawaii
6 Revised Statutes.

7 SECTION 2. Section 706-606.5, Hawaii Revised Statutes, is
8 amended by amending subsection (1) to read as follows:

9 "(1) Notwithstanding section 706-669 and any other law to
10 the contrary, any person convicted of murder in the second
11 degree, any class A felony, any class B felony, or any of the
12 following class C felonies: section 188-23 relating to
13 possession or use of explosives, electrofishing devices, and
14 poisonous substances in state waters; section 386-98(d)(1)
15 relating to workers' compensation insurance fraud violations and
16 penalties; section 431:10A-131(b)(2) relating to health
17 insurance fraud violations and penalties; section 431:10C-
18 307.7(b)(2) relating to motor vehicle insurance fraud violations
19 and penalties; section 432:1-106(b)(2) relating to mutual
20 benefit societies health insurance fraud violations and
21 penalties; section 432D-18.5(b)(2) relating to health
22 maintenance organizations health insurance fraud violations and

1 penalties; section 707-703 relating to negligent homicide in the
2 second degree; section 707-711 relating to assault in the second
3 degree; section 707-713 relating to reckless endangering in the
4 first degree; section 707-716 relating to terroristic
5 threatening in the first degree; section 707-721 relating to
6 unlawful imprisonment in the first degree; section 707-732
7 relating to sexual assault or rape in the third degree; section
8 707-752 relating to promoting child abuse in the third degree;
9 section 707-757 relating to electronic enticement of a child in
10 the second degree; section 707-766 relating to extortion in the
11 second degree; section 708-811 relating to burglary in the
12 second degree; section 708-821 relating to criminal property
13 damage in the second degree; section 708-831 relating to theft
14 in the first degree as amended by Act 68, Session Laws of Hawaii
15 1981; section 708-831 relating to theft in the second degree;
16 section 708-835.5 relating to theft of livestock; section 708-
17 836 relating to unauthorized control of propelled vehicle;
18 [+]section[+] 708-839.8 relating to identity theft in the third
19 degree; [+]section[+] 708-839.55 relating to unauthorized
20 possession of confidential personal information; section 708-852
21 relating to forgery in the second degree; section 708-854
22 relating to criminal possession of a forgery device; section

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1 708-875 relating to trademark counterfeiting; section 710-1071
2 relating to intimidating a witness; section 711-1103 relating to
3 riot; section 712-1203 relating to promoting prostitution in the
4 second degree; section 712-1221 relating to gambling in the
5 first degree; section 712-1224 relating to possession of
6 gambling records in the first degree; section 712-1243 relating
7 to promoting a dangerous drug in the third degree; section 712-
8 1247 relating to promoting a detrimental drug in the first
9 degree; section 134-7 relating to ownership or possession of
10 firearms or ammunition by persons convicted of certain crimes;
11 section 134-8 relating to ownership, etc., of prohibited
12 weapons; section 134-9 relating to permits to carry, or who is
13 convicted of attempting to commit murder in the second degree,
14 any class A felony, any class B felony, or any of the class C
15 felony offenses enumerated above and who has a prior conviction
16 or prior convictions for the following felonies, including an
17 attempt to commit the same: murder, murder in the first or
18 second degree, a class A felony, a class B felony, any of the
19 class C felony offenses enumerated above, or any felony
20 conviction of another jurisdiction, shall be sentenced to a
21 mandatory minimum period of imprisonment without possibility of
22 parole during such period as follows:

- 1 (a) One prior felony conviction:
- 2 (i) Where the instant conviction is for murder in the
- 3 second degree or attempted murder in the second
- 4 degree—ten years;
- 5 (ii) Where the instant conviction is for a class A
- 6 felony—six years, eight months;
- 7 (iii) Where the instant conviction is for a class B
- 8 felony—three years, four months;
- 9 (iv) Where the instant conviction is for a class C
- 10 felony offense enumerated above—one year, eight
- 11 months;
- 12 (b) Two prior felony convictions:
- 13 (i) Where the instant conviction is for murder in the
- 14 second degree or attempted murder in the second
- 15 degree—twenty years;
- 16 (ii) Where the instant conviction is for a class A
- 17 felony—thirteen years, four months;
- 18 (iii) Where the instant conviction is for a class B
- 19 felony—six years, eight months;
- 20 (iv) Where the instant conviction is for a class C
- 21 felony offense enumerated above—three years, four
- 22 months;

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- 1 (c) Three or more prior felony convictions:
- 2 (i) Where the instant conviction is for murder in the
- 3 second degree or attempted murder in the second
- 4 degree—thirty years;
- 5 (ii) Where the instant conviction is for a class A
- 6 felony—twenty years;
- 7 (iii) Where the instant conviction is for a class B
- 8 felony—ten years;
- 9 (iv) Where the instant conviction is for a class C
- 10 felony offense enumerated above—five years."

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect upon its approval.

14

15 INTRODUCED BY: _____

16 BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO SENTENCING OF REPEAT OFFENDERS.

PURPOSE: This measure will toughen the penalties imposed upon those individuals who repeatedly commit felony crimes by specifying that any person committing felony insurance fraud in motor vehicle insurance, private health insurance, mutual benefit health insurance, health maintenance organization health insurance, and worker's compensation insurance lines will be subject to repeat offender increased sentencing guidelines if that person has a previous conviction for the crime of felony insurance fraud.

MEANS: Amend section 706-606.5(1), Hawaii Revised Statutes (HRS).

JUSTIFICATION: The Legislature enacted Act 251, Session Laws of Hawaii 1997, finding it necessary to protect Hawaii's citizens from the growing cost of motor vehicle insurance fraud. The Legislature then enacted Act 155 and Act 275, Session Laws of Hawaii 1998, enhancing and clarifying the fraud penalty statutes and the powers and purpose of the Insurance Fraud Investigations Unit. Subsequently, the Legislature enacted Act 125, Session Laws of Hawaii 2003, finding that insurance fraud crosses more than one line of insurance. The Legislature also expanded the crime of insurance fraud beyond motor vehicles to now include insurance fraud within health insurance.

There are insurance fraud violations and penalties in five lines of insurance. These are workers' compensation insurance (section 386-98, HRS), private health insurance (section 431:10A-131, HRS), motor vehicle

insurance (section 431:10C-307.7, HRS), mutual benefit societies health insurance (section 432:1-106, HRS), and health maintenance organization health insurance (section 432D-18.5, HRS). Under the current repeat offender statute these felony crimes are not specified as repeat offender crimes. The crime of attempted theft is in the repeat offender statute.

Insurance fraud and attempted theft cannot be charged together because of the issue of "merger." The elements of attempted theft are part of the elements to charge insurance fraud. Since attempted theft is included in the repeat offender statute and attempted theft is a composite of insurance fraud, insurance fraud should also be included as part of the repeat offender statute to reflect that insurance fraud is a specific type of attempted theft and to reflect the serious and costly nature of the crime of insurance fraud.

Impact on the public: There should be a positive impact on the public as this will stiffen the penalties for those who commit insurance fraud and thereby, save more money for employers and insurers, by reducing the amount paid out for fraudulent claims and policies.

Additionally, 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 by adding another deterrent to those who commit insurance fraud because they consider it a high reward low risk offense. This should save money for policyholders by reducing the amount paid out for fraudulent claims and policies.

Impact on the department and other agencies: This will have the positive effect of lessening the workload of other State law enforcement agencies by allowing the

insurance division to continue its work in preventing, investigating, and prosecuting insurance fraud. This will have the positive effect by demonstrating the seriousness of insurance fraud since it is a crime that hurts the economic state of the businesses and insurance industries of the state. With this additional deterrent, the Department of Commerce and Consumer Affairs will have another tool to help control the crime of insurance fraud by punishing those who commit insurance fraud on multiple occasions with stiffer penalties.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-106.

OTHER AFFECTED
AGENCIES: Department of Labor and Industrial Relations, Workers Compensation Division; Department of the Attorney General; and Department of Human Resources Development.

EFFECTIVE DATE: Upon approval.