

JAN 18 2008

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 annually per year. In recognition of the impact
5 that fraud has on the cost of motor vehicle insurance, the
6 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 enhanced and clarified the powers and purpose of the
12 insurance fraud investigations unit.

13 Insurance fraud also has increasingly affected 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
8 431:10A, 432:1, and 432D, Hawaii Revised Statutes. However,
9 none of these penalty provisions clearly designates a specific
10 law enforcement agency charged with the responsibility for the
11 investigation and prosecution of insurance fraud investigations.

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 cases, rather than be limited to
16 administrative, civil, and criminal penalties for insurance
17 fraud cases relating to only a select few lines of insurance.

18 The purpose of this Act is to:

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



1 lines of insurance fraud, except for workers'
2 compensation claims under chapter 386, Hawaii Revised
3 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 claims
7 under 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 by not limited to an insurer governed by
5 chapter 431, a mutual benefit society governed by chapter 432,
6 article 1, a fraternal benefit society governed by chapter 432,
7 article 2, or a health maintenance organization governed by
8 chapter 432D, and their respective agents and employees engaged
9 in the business of the 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 insurance fraud relating to but not limited to title
20 24;

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



1 and courts of competent jurisdiction all person
2 involved in insurance fraud violations arising out of
3 be not limited to chapters 431, 432, and 432D; 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 but not limited to criminal prosecutions, disciplinary
21 actions, and actions for declaratory and injunctive relief.
22 Each attorney representing the State in a proceeding shall be



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

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

11 **§431:2-C Insurance fraud; criminal penalties.** (a) A
12 person commits the offense of insurance fraud if the person:

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

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



1 (B) When presenting, or causing or permitting to be
2 presented, false information on a claim for
3 payment whether typed, written, or transmitted
4 through electronic media;

5 (C) When presenting, or causing or permitting to be
6 presented, a claim for the payment of a loss;

7 (D) When presenting, or causing or permitting to be
8 presented, improper multiple duplicative claims
9 for the same loss or injury, including knowingly
10 presenting these multiple and duplicative claims
11 to more than one insurer;

12 (E) When presenting, or causing or permitting to be
13 presented, any claim for payment of a health care
14 benefit;

15 (F) When presenting, or causing or permitting to be
16 presented, a claim for a health care benefit that
17 was not used by, or provided on behalf of, the
18 claimant;

19 (G) When presenting, or causing or permitting to be
20 presented, improper multiple and duplicative
21 claims for payment of the same health care
22 benefit;



- 1 (H) When presenting, or causing or permitting to be
2 presented, for payment, any undercharges for
3 benefits on behalf of a specific claimant unless
4 any known overcharges for benefits under this
5 article for that claimant are presented for
6 reconciliation at the same time;
- 7 (I) When fabricating, altering, concealing, making an
8 entry in, or destroying a document whether typed,
9 written, or through an audio or video tape or
10 electronic media;
- 11 (J) When presenting, or causing or permitting to be
12 presented, to a person, insurer, or other
13 licensee false, incomplete, or misleading
14 information to obtain coverage or payment
15 otherwise available under an insurance policy;
- 16 (K) When presenting, or causing or permitting to be
17 presented, to a person or producer, information
18 about a person's status as a licensed producer
19 that induces a person or insurer to purchase an
20 insurance policy or reinsurance contract; and
- 21 (L) When making, or causing or permitting to be made,
22 any statement, either typed, written, or through



1 audio or video tape or electronic media, or
2 claims by the person or on behalf of a person
3 with regard to obtaining legal recovery or
4 benefits;

5 (2) Intentionally or knowingly aids, agrees, or attempts
6 to aid, solicit, or conspire with any person who
7 engages in an unlawful act as defined under this
8 section; or

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

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

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



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

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

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

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

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

19 **§431:2-E Insurance fraud; administrative penalties.** (a)
20 In addition to or in lieu of criminal penalties under section
21 431:2-C(b), any person who commits insurance fraud as defined



1 under section 431:2-C, may be subject to the administrative
2 penalties of this section.

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

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

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

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

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

21 (d) For the purpose of subsection (b), "knowingly" means
22 that a person has actual knowledge of the facts, and either:



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

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

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

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

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

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

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



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

- 9 (1) A court;
- 10 (2) The commissioner;
- 11 (3) The insurance fraud investigations branch;
- 12 (4) The National Association of Insurance Commissioners;
- 13 (5) The National Insurance Crime Bureau;
- 14 (6) Any federal, state, or county law enforcement or
15 regulatory agency; or
- 16 (7) Another insurer of other licensee,

17 if the information is provided for the purpose of preventing,
18 investigating, or prosecuting insurance fraud, except if the
19 person commits perjury.

20 (c) Civil actions brought for insurance fraud under this
21 part shall be brought within six years after the insurance fraud
22 is discovered or by exercise of reasonable diligence should have



1 been discovered and, in any event, no more than ten years after
2 the date on which a violation of this part is committed.

3 **§431:2-I Mandatory reporting.** (a) Within sixty days of
4 an insurer or other licensee's employee or agent discovering
5 credible information indicating that a violation of section
6 431:2-C is occurring or has occurred or as soon thereafter as
7 practicable, the insurer or licensee shall provide to the
8 insurance fraud investigations branch the information, including
9 documents and other evidence, regarding the alleged violation of
10 section 431:2-C.

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

20 **§431:2-J Deposit into the compliance resolution fund.** All
21 moneys that have been recovered by the department of commerce
22 and consumer affairs as a result of prosecuting insurance fraud



1 violations pursuant to this part, including civil fines,
2 criminal fines, administrative fines, and settlements, but not
3 including restitution made pursuant to section 431:2-D, 431:2-
4 E(b) (1), or 431:2-H, shall be deposited into the compliance
5 resolution fund established pursuant to section 26-9(o)."

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

8 "(b) (1) A person who intentionally or knowingly violates,
9 intentionally or knowingly permits any person over
10 whom the person has authority to violate, or
11 intentionally or knowingly aids any person in
12 violating any insurance rule or statute of this State
13 or any effective order issued by the commissioner,
14 shall be subject to any penalty or fine as [~~stated in~~]
15 provided by this code or the penal code of the Hawaii
16 Revised Statutes.

17 (2) If the commissioner has cause to believe that any
18 person has violated any penal provision of this code
19 or of other laws relating to insurance, the
20 commissioner may proceed against that person or shall
21 certify the facts of the violation to the public



1 prosecutor of the jurisdiction in which the offense
2 was committed.

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

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

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

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



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

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

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

8 [~~§431:10A-131 Insurance fraud, penalties.~~ (a) A person
9 ~~commits the offense of insurance fraud if the person acts or~~
10 ~~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, with the intent to defraud, any false~~
16 ~~information on a claim;~~

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

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



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



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

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

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

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

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

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

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



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

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

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

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

20 [~~§431:10C-307.7 Insurance fraud; penalties. (a) A~~
21 ~~person commits the offense of insurance fraud if the person acts~~
22 ~~or omits to act with intent to obtain benefits or recovery or~~



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

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



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

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

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

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

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

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



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

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

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

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



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

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

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

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



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

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

14 [~~"§431:10C-307.8 Insurance fraud investigations unit. (a)~~
 15 ~~There is established in the insurance division an insurance~~
 16 ~~fraud investigations unit.~~

17 ~~(b) The unit shall employ attorneys, investigators,~~
 18 ~~investigator assistants, and other support staff as necessary to~~
 19 ~~promote the effective and efficient conduct of the unit's~~
 20 ~~activities. Notwithstanding any other law to the contrary, the~~
 21 ~~attorneys may represent the State in any judicial or~~
 22 ~~administrative proceeding to enforce all applicable state laws~~



1 ~~relating to insurance fraud, including but not limited to~~
2 ~~criminal prosecutions and actions for declaratory and injunctive~~
3 ~~relief. Investigators may serve process and apply for and~~
4 ~~execute search warrants pursuant to chapter 803 and the rules of~~
5 ~~court but shall not otherwise have the powers of a police~~
6 ~~officer or deputy sheriff. The commissioner may hire such~~
7 ~~employees not subject to chapter 76.~~

8 ~~(c) The purpose of the insurance fraud investigations unit~~
9 ~~shall be to conduct a statewide program for the prevention,~~
10 ~~investigation, and prosecution of insurance fraud cases and~~
11 ~~violations of all applicable state laws relating to insurance~~
12 ~~fraud. The insurance fraud investigations unit may also review~~
13 ~~and take appropriate action on complaints relating to insurance~~
14 ~~fraud."]~~

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

17 ~~["~~§432:1-106~~ Insurance fraud, penalties. (a) A person~~
18 ~~commits the offense of insurance fraud if the person acts or~~
19 ~~omits to act with intent to obtain benefits or recovery or~~
20 ~~compensation for services provided, or provides legal assistance~~
21 ~~or counsel with intent to obtain benefits or recovery, through~~
22 ~~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 10. Section 432D-18.5, Hawaii Revised Statutes, is
 7 repealed.

8 ~~["§432D-18.5] Insurance fraud; penalties. (a) A person~~
 9 ~~commits the offense of insurance fraud if the person acts or~~
 10 ~~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, with the intent to defraud, any false~~
 16 ~~information on a claim;~~

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

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



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



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

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

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

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

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

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

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



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

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

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

18 SECTION 11. All rights, powers, functions, and duties of
19 the insurance fraud investigations unit are transferred to the
20 insurance fraud investigations branch.

21 All officers and employees whose functions are transferred
22 by this Act shall be transferred with their functions and shall



1 continue to perform their regular duties upon their transfer,
2 subject to the state personnel laws and this Act.

3 No officer or employee of the State having tenure shall
4 suffer any loss of salary, seniority, prior service credit,
5 vacation, sick leave, or other employee benefit or privilege as
6 a consequence of this Act, and such officer or employee may be
7 transferred or appointed to a civil service position without the
8 necessity of examination; provided that the officer or employee
9 possesses the minimum qualifications for the position to which
10 transferred or appointed; and provided that subsequent changes
11 in status may be made pursuant to applicable civil service and
12 compensation laws.

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



1 If an office or position held by an officer or employee
2 having tenure is abolished, the officer or employee shall not
3 thereby be separated from public employment, but shall remain in
4 the employment of the State with the same pay and classification
5 and shall be transferred to some other office or position for
6 which the officer or employee is eligible under the personnel
7 laws of the State as determined by the head of the department or
8 the governor.

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

16 SECTION 13. This Act does not affect rights and duties
17 that matured, penalties that were incurred, and proceedings that
18 were begun, before its effective date.

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.



S.B. NO. 2313

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 upon its approval.

4

INTRODUCED BY: Bruno Kolb B/R



Report Title:

Insurance Fraud

Description:

Expands the authority of the insurance division's insurance fraud investigations unit under the department of commerce and consumer affairs to prevent, investigate, and prosecute insurance fraud beyond motor vehicle insurance cases to all lines of insurance except workers' compensation.

