

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. The legislature finds that small insurers are
2 essential in providing consumers with insurance coverage
3 options, and operate under significantly heavier market
4 constraints than larger insurers. Small insurers frequently
5 exercise the longstanding practice of "bundling" different
6 classes of insurance, such as health, dental, and vision,
7 together in a unified single policy to provide broader insurance
8 coverage as well as greater flexibility and pricing options for
9 consumers.

10 Anti-tying statutes that prohibit the bundling of different
11 classes of insurance are aimed at large insurers who possess a
12 larger share of the market and prevent these insurers from
13 monopolizing the market through deceptive or unfair acts or
14 coercion. Due to their small share of the market, small
15 insurers lack the same level of coercive power as their larger
16 competitors. Thus, anti-tying statutes ultimately hurt the



1 consumers of small insurers by preventing them from obtaining a
2 unified single policy by bundling their benefits together.

3 The purpose of this Act is to allow small insurers with
4 less than ten per cent of the market share to bundle different
5 types of benefits into a single unified policy without violating
6 anti-tying statutes.

7 SECTION 2. Section 431:13-103, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) The following are defined as unfair methods of
10 competition and unfair or deceptive acts or practices in the
11 business of insurance:

12 (1) Misrepresentations and false advertising of insurance
13 policies. Making, issuing, circulating, or causing to
14 be made, issued, or circulated, any estimate,
15 illustration, circular, statement, sales presentation,
16 omission, or comparison which:

17 (A) Misrepresents the benefits, advantages,
18 conditions, or terms of any insurance policy;

19 (B) Misrepresents the dividends or share of the
20 surplus to be received on any insurance policy;



- 1 (C) Makes any false or misleading statement as to the
2 dividends or share of surplus previously paid on
3 any insurance policy;
- 4 (D) Is misleading or is a misrepresentation as to the
5 financial condition of any insurer, or as to the
6 legal reserve system upon which any life insurer
7 operates;
- 8 (E) Uses any name or title of any insurance policy or
9 class of insurance policies misrepresenting the
10 true nature thereof;
- 11 (F) Is a misrepresentation for the purpose of
12 inducing or tending to induce the lapse,
13 forfeiture, exchange, conversion, or surrender of
14 any insurance policy;
- 15 (G) Is a misrepresentation for the purpose of
16 effecting a pledge or assignment of or effecting
17 a loan against any insurance policy;
- 18 (H) Misrepresents any insurance policy as being
19 shares of stock;
- 20 (I) Publishes or advertises the assets of any insurer
21 without publishing or advertising with equal



1 conspicuousness the liabilities of the insurer,
2 both as shown by its last annual statement; or
3 (J) Publishes or advertises the capital of any
4 insurer without stating specifically the amount
5 of paid-in and subscribed capital;
6 (2) False information and advertising generally. Making,
7 publishing, disseminating, circulating, or placing
8 before the public, or causing, directly or indirectly,
9 to be made, published, disseminated, circulated, or
10 placed before the public, in a newspaper, magazine, or
11 other publication, or in the form of a notice,
12 circular, pamphlet, letter, or poster, or over any
13 radio or television station, or in any other way, an
14 advertisement, announcement, or statement containing
15 any assertion, representation, or statement with
16 respect to the business of insurance or with respect
17 to any person in the conduct of the person's insurance
18 business, which is untrue, deceptive, or misleading;
19 (3) Defamation. Making, publishing, disseminating, or
20 circulating, directly or indirectly, or aiding,
21 abetting, or encouraging the making, publishing,
22 disseminating, or circulating of any oral or written



1 statement or any pamphlet, circular, article, or
2 literature which is false, or maliciously critical of
3 or derogatory to the financial condition of an
4 insurer, and which is calculated to injure any person
5 engaged in the business of insurance;

6 (4) Boycott, coercion, and intimidation.

7 (A) Entering into any agreement to commit, or by any
8 action committing, any act of boycott, coercion,
9 or intimidation resulting in or tending to result
10 in unreasonable restraint of, or monopoly in, the
11 business of insurance; or

12 (B) Entering into any agreement on the condition,
13 agreement, or understanding that a policy will
14 not be issued or renewed unless the prospective
15 insured contracts for another class or an
16 additional policy of the same class of insurance
17 with the same insurer; provided that this
18 subsection shall not apply to any insurer with
19 less than ten per cent of the market share;

20 (5) False financial statements.

21 (A) Knowingly filing with any supervisory or other
22 public official, or knowingly making, publishing,



1 disseminating, circulating, or delivering to any
2 person, or placing before the public, or
3 knowingly causing, directly or indirectly, to be
4 made, published, disseminated, circulated,
5 delivered to any person, or placed before the
6 public, any false statement of a material fact as
7 to the financial condition of an insurer; or

8 (B) Knowingly making any false entry of a material
9 fact in any book, report, or statement of any
10 insurer with intent to deceive any agent or
11 examiner lawfully appointed to examine into its
12 condition or into any of its affairs, or any
13 public official to whom the insurer is required
14 by law to report, or who has authority by law to
15 examine into its condition or into any of its
16 affairs, or, with like intent, knowingly omitting
17 to make a true entry of any material fact
18 pertaining to the business of the insurer in any
19 book, report, or statement of the insurer;

20 (6) Stock operations and advisory board contracts.

21 Issuing or delivering or permitting agents, officers,
22 or employees to issue or deliver, agency company stock



1 or other capital stock, or benefit certificates or
2 shares in any common-law corporation, or securities or
3 any special or advisory board contracts or other
4 contracts of any kind promising returns and profits as
5 an inducement to insurance;

6 (7) Unfair discrimination.

7 (A) Making or permitting any unfair discrimination
8 between individuals of the same class and equal
9 expectation of life in the rates charged for any
10 policy of life insurance or annuity contract or
11 in the dividends or other benefits payable
12 thereon, or in any other of the terms and
13 conditions of the contract;

14 (B) Making or permitting any unfair discrimination in
15 favor of particular individuals or persons, or
16 between insureds or subjects of insurance having
17 substantially like insuring, risk, and exposure
18 factors, or expense elements, in the terms or
19 conditions of any insurance contract, or in the
20 rate or amount of premium charge therefor, or in
21 the benefits payable or in any other rights or
22 privilege accruing thereunder;



1 (C) Making or permitting any unfair discrimination
2 between individuals or risks of the same class
3 and of essentially the same hazards by refusing
4 to issue, refusing to renew, canceling, or
5 limiting the amount of insurance coverage on a
6 property or casualty risk because of the
7 geographic location of the risk, unless:

8 (i) The refusal, cancellation, or limitation is
9 for a business purpose which is not a mere
10 pretext for unfair discrimination; or

11 (ii) The refusal, cancellation, or limitation is
12 required by law or regulatory mandate;

13 (D) Making or permitting any unfair discrimination
14 between individuals or risks of the same class
15 and of essentially the same hazards by refusing
16 to issue, refusing to renew, canceling, or
17 limiting the amount of insurance coverage on a
18 residential property risk, or the personal
19 property contained therein, because of the age of
20 the residential property, unless:



- 1 (i) The refusal, cancellation, or limitation is
2 for a business purpose which is not a mere
3 pretext for unfair discrimination; or
4 (ii) The refusal, cancellation, or limitation is
5 required by law or regulatory mandate;
- 6 (E) Refusing to insure, refusing to continue to
7 insure, or limiting the amount of coverage
8 available to an individual because of the sex or
9 marital status of the individual; however,
10 nothing in this subsection shall prohibit an
11 insurer from taking marital status into account
12 for the purpose of defining persons eligible for
13 dependent benefits;
- 14 (F) Terminating or modifying coverage, or refusing to
15 issue or renew any property or casualty policy or
16 contract of insurance solely because the
17 applicant or insured or any employee of either is
18 mentally or physically impaired; provided that
19 this subparagraph shall not apply to accident and
20 health or sickness insurance sold by a casualty
21 insurer; provided further that this subparagraph
22 shall not be interpreted to modify any other



1 provision of law relating to the termination,
2 modification, issuance, or renewal of any
3 insurance policy or contract;

4 (G) Refusing to insure, refusing to continue to
5 insure, or limiting the amount of coverage
6 available to an individual based solely upon the
7 individual's having taken a human
8 immunodeficiency virus (HIV) test prior to
9 applying for insurance; or

10 (H) Refusing to insure, refusing to continue to
11 insure, or limiting the amount of coverage
12 available to an individual because the individual
13 refuses to consent to the release of information
14 which is confidential as provided in section
15 325-101; provided that nothing in this
16 subparagraph shall prohibit an insurer from
17 obtaining and using the results of a test
18 satisfying the requirements of the commissioner,
19 which was taken with the consent of an applicant
20 for insurance; provided further that any
21 applicant for insurance who is tested for HIV
22 infection shall be afforded the opportunity to



1 obtain the test results, within a reasonable time
2 after being tested, and that the confidentiality
3 of the test results shall be maintained as
4 provided by section 325-101;

5 (8) Rebates. Except as otherwise expressly provided by
6 law:

7 (A) Knowingly permitting or offering to make or
8 making any contract of insurance, or agreement as
9 to the contract other than as plainly expressed
10 in the contract, or paying or allowing, or giving
11 or offering to pay, allow, or give, directly or
12 indirectly, as inducement to the insurance, any
13 rebate of premiums payable on the contract, or
14 any special favor or advantage in the dividends
15 or other benefits, or any valuable consideration
16 or inducement not specified in the contract; or

17 (B) Giving, selling, or purchasing, or offering to
18 give, sell, or purchase as inducement to the
19 insurance or in connection therewith, any stocks,
20 bonds, or other securities of any insurance
21 company or other corporation, association, or
22 partnership, or any dividends or profits accrued



1 thereon, or anything of value not specified in
2 the contract;

3 (9) Nothing in paragraph (7) or (8) shall be construed as
4 including within the definition of discrimination or
5 rebates any of the following practices:

6 (A) In the case of any life insurance policy or
7 annuity contract, paying bonuses to policyholders
8 or otherwise abating their premiums in whole or
9 in part out of surplus accumulated from
10 nonparticipating insurance; provided that any
11 bonus or abatement of premiums shall be fair and
12 equitable to policyholders and in the best
13 interests of the insurer and its policyholders;

14 (B) In the case of life insurance policies issued on
15 the industrial debit plan, making allowance to
16 policyholders who have continuously for a
17 specified period made premium payments directly
18 to an office of the insurer in an amount which
19 fairly represents the saving in collection
20 expense;

21 (C) Readjustment of the rate of premium for a group
22 insurance policy based on the loss or expense



1 experience thereunder, at the end of the first or
2 any subsequent policy year of insurance
3 thereunder, which may be made retroactive only
4 for the policy year; and

5 (D) In the case of any contract of insurance, the
6 distribution of savings, earnings, or surplus
7 equitably among a class of policyholders, all in
8 accordance with this article;

9 (10) Refusing to provide or limiting coverage available to
10 an individual because the individual may have a third-
11 party claim for recovery of damages; provided that:

12 (A) Where damages are recovered by judgment or
13 settlement of a third-party claim, reimbursement
14 of past benefits paid shall be allowed pursuant
15 to section 663-10;

16 (B) This paragraph shall not apply to entities
17 licensed under chapter 386 or 431:10C; and

18 (C) For entities licensed under chapter 432 or 432D:

19 (i) It shall not be a violation of this section
20 to refuse to provide or limit coverage
21 available to an individual because the
22 entity determines that the individual



1 reasonably appears to have coverage
2 available under chapter 386 or 431:10C; and
3 (ii) Payment of claims to an individual who may
4 have a third-party claim for recovery of
5 damages may be conditioned upon the
6 individual first signing and submitting to
7 the entity documents to secure the lien and
8 reimbursement rights of the entity and
9 providing information reasonably related to
10 the entity's investigation of its liability
11 for coverage.

12 Any individual who knows or reasonably should
13 know that the individual may have a third-party
14 claim for recovery of damages and who fails to
15 provide timely notice of the potential claim to
16 the entity, shall be deemed to have waived the
17 prohibition of this paragraph against refusal or
18 limitation of coverage. "Third-party claim" for
19 purposes of this paragraph means any tort claim
20 for monetary recovery or damages that the
21 individual has against any person, entity, or



1 insurer, other than the entity licensed under
2 chapter 432 or 432D;

3 (11) Unfair claim settlement practices. Committing or
4 performing with such frequency as to indicate a
5 general business practice any of the following:

6 (A) Misrepresenting pertinent facts or insurance
7 policy provisions relating to coverages at issue;

8 (B) With respect to claims arising under its
9 policies, failing to respond with reasonable
10 promptness, in no case more than fifteen working
11 days, to communications received from:

12 (i) The insurer's policyholder;

13 (ii) Any other persons, including the
14 commissioner; or

15 (iii) The insurer of a person involved in an
16 incident in which the insurer's policyholder
17 is also involved.

18 The response shall be more than an acknowledgment
19 that such person's communication has been
20 received, and shall adequately address the
21 concerns stated in the communication;



- 1 (C) Failing to adopt and implement reasonable
2 standards for the prompt investigation of claims
3 arising under insurance policies;
- 4 (D) Refusing to pay claims without conducting a
5 reasonable investigation based upon all available
6 information;
- 7 (E) Failing to affirm or deny coverage of claims
8 within a reasonable time after proof of loss
9 statements have been completed;
- 10 (F) Failing to offer payment within thirty calendar
11 days of affirmation of liability, if the amount
12 of the claim has been determined and is not in
13 dispute;
- 14 (G) Failing to provide the insured, or when
15 applicable the insured's beneficiary, with a
16 reasonable written explanation for any delay, on
17 every claim remaining unresolved for thirty
18 calendar days from the date it was reported;
- 19 (H) Not attempting in good faith to effectuate
20 prompt, fair, and equitable settlements of claims
21 in which liability has become reasonably clear;



- 1 (I) Compelling insureds to institute litigation to
2 recover amounts due under an insurance policy by
3 offering substantially less than the amounts
4 ultimately recovered in actions brought by the
5 insureds;
- 6 (J) Attempting to settle a claim for less than the
7 amount to which a reasonable person would have
8 believed the person was entitled by reference to
9 written or printed advertising material
10 accompanying or made part of an application;
- 11 (K) Attempting to settle claims on the basis of an
12 application which was altered without notice,
13 knowledge, or consent of the insured;
- 14 (L) Making claims payments to insureds or
15 beneficiaries not accompanied by a statement
16 setting forth the coverage under which the
17 payments are being made;
- 18 (M) Making known to insureds or claimants a policy of
19 appealing from arbitration awards in favor of
20 insureds or claimants for the purpose of
21 compelling them to accept settlements or



- 1 compromises less than the amount awarded in
2 arbitration;
- 3 (N) Delaying the investigation or payment of claims
4 by requiring an insured, claimant, or the
5 physician of either to submit a preliminary claim
6 report and then requiring the subsequent
7 submission of formal proof of loss forms, both of
8 which submissions contain substantially the same
9 information;
- 10 (O) Failing to promptly settle claims, where
11 liability has become reasonably clear, under one
12 portion of the insurance policy coverage to
13 influence settlements under other portions of the
14 insurance policy coverage;
- 15 (P) Failing to promptly provide a reasonable
16 explanation of the basis in the insurance policy
17 in relation to the facts or applicable law for
18 denial of a claim or for the offer of a
19 compromise settlement; and
- 20 (Q) Indicating to the insured on any payment draft,
21 check, or in any accompanying letter that the
22 payment is "final" or is "a release" of any claim



1 if additional benefits relating to the claim are
2 probable under coverages afforded by the policy;
3 unless the policy limit has been paid or there is
4 a bona fide dispute over either the coverage or
5 the amount payable under the policy;

6 (12) Failure to maintain complaint handling procedures.

7 Failure of any insurer to maintain a complete record
8 of all the complaints which it has received since the
9 date of its last examination under section 431:2-302.
10 This record shall indicate the total number of
11 complaints, their classification by line of insurance,
12 the nature of each complaint, the disposition of these
13 complaints, and the time it took to process each
14 complaint. For purposes of this section, "complaint"
15 means any written communication primarily expressing a
16 grievance;

17 (13) Misrepresentation in insurance applications. Making
18 false or fraudulent statements or representations on
19 or relative to an application for an insurance policy,
20 for the purpose of obtaining a fee, commission, money,
21 or other benefit from any insurer, producer, or
22 individual; and



1 (14) Failure to obtain information. Failure of any
2 insurance producer, or an insurer where no producer is
3 involved, to comply with section 431:10D-623(a), (b),
4 or (c) by making reasonable efforts to obtain
5 information about a consumer before making a
6 recommendation to the consumer to purchase or exchange
7 an annuity."

8 SECTION 3. New statutory material is underscored.

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

10

INTRODUCED BY: Runees. Kohl B/R



Report Title:

Insurance; Unfair Practices; Exception for Small Insurers

Description:

Allows an exception for small insurers with less than ten per cent of the market share to offer different types of benefits in a single unified policy.

