

**Testimony of Robert Toyofuku
On Behalf of
Hawaii Association for Justice
IN OPPOSITION
To HB No. 262**

LATE TESTIMONY

The Hawaii Association for Justice supports the prohibition of insurance fraud and establishment of appropriate penalties, however, the current draft of H.B. No. 262 requires amendments to address substantive and technical deficiencies. The Hawaii Association for Justice therefore opposes H.B. No. 262 in its current form.

Insurance companies and their employees and agents are exempted from the prohibition against insurance fraud in this measure. Section 431:2-A, specifically exempts insurers and their employees from the definition of a "Person" who is prohibited from engaging in insurance fraud. This makes no sense. Everyone should be prohibited from engaging in insurance fraud.

There have been many instances in the past where insurance companies, claims adjusters and agents have engaged in insurance fraud. Recently, a life insurance company defrauded over 1,000 Hawaii residents leaving many elderly consumers without insurance that they had been paying premiums on for twenty years. There have been several fraudulent claims scams perpetrated by insurance adjusters and insurance agents to process fictitious or phony accident claims over the years. There is no reason to protect insurance companies and their employees or agents from committing insurance fraud by exempting them from the provisions of this measure.

Section 431:2-C changes the definition of insurance fraud currently found in Section 432:1-106. In doing so, specific references to actions taken with the intent to defraud found in the current law have been deleted. Thus it is now ambiguous whether one must attempt to commit fraud in order to be guilty of insurance fraud or not.

Section 431:2-E gives insurance companies the right to recover restitution and attorneys fees and costs from a consumer who commits insurance fraud, but does not permit a consumer from collecting restitution and attorneys fees and costs from an insurance company that commits fraud against a consumer. The rights and penalties applicable to both consumers and insurance companies should apply equally. There is no reason to protect insurance companies who commit insurance fraud against consumers by denying consumers the right to restitution and attorneys fees and costs.

The standard of conduct applicable to consumers is also not equal with the standard of conduct applicable to insurance companies. Under section 431:2-E(d), a consumer can be found guilty of fraud even though there is no "intent" to defraud. Yet, under section 431:2-H, there must be "actual malice" to hold an insurance company responsible for falsely accusing a consumer of fraud. Actual malice is not required under the current law. The standard applicable to consumers and insurers should be equal.

The Hawaii Association for Justice respectfully requests that this measure be amended to prohibit all insurance fraud by including insurance companies and their employees among those prohibited from engaging in fraud, by clarifying that there must be an intent to defraud or improperly obtain insurance benefits, and by applying equal standards to both consumers and insurers.

The Hawaii Association for Justice appreciates this opportunity to testify in opposition to H.B. No. 262.