

**Testimony of Robert Toyofuku**  
**On Behalf of Hawaii Association for Justice**  
**(formerly known as Consumer Lawyers)**  
**IN OPPOSITION**  
**To HB No. 262, HD 2**

**LATE**

The Hawaii Association for Justice (HAJ) supports the prohibition of insurance fraud and establishment of appropriate penalties, however, the current draft of H.B. No. 262, H.D. 2 requires amendments to address substantive and technical deficiencies. The Hawaii Association for Justice therefore opposes H.B. No. 262, H.D.2 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 of the bill specifically exempts insurers and their employees from the definition of a "Person" who is prohibited from engaging in insurance fraud, providing: "but shall exclude insurers." This makes no sense. Everyone should be prohibited from engaging in insurance fraud.

There have been 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 claim scams perpetrated by insurance adjusters and insurance agents to process fictitious or phony accident claims over the years. There have been automobile repair schemes involving insurance company personnel and body and fender repair shops. 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. Everyone involved in insurance fraud should be included in a comprehensive insurance fraud statute.

The proponents of this measure have advanced no sound reason for excluding insurance fraud committed by insurance companies and their employees. Nor have they articulated any reason that public policy and consumer protection would be furthered in any way by excluding insurance fraud committed by insurance companies. The only excuse given to date is that there are other administrative rules that cover aspects of insurance fraud by insurance companies. This is unpersuasive for three reasons.

First, fraudulent obtaining of insurance benefits by consumers is also covered by existing theft provisions of the penal code and fraud is actionable under our current civil laws. So the fact that there are other rules or statutes that also address fraud is no basis for excluding a major player in insurance fraud.

Second, current administrative rules do not provide the same remedies as the fraud statute. The rules do not provide for criminal penalties such as incarceration or for direct restitution to those defrauded by insurance companies. The rules simply lack the

deterrent effect of criminal penalties to prevent fraud and lack the punishment needed to redress those who nonetheless commit fraud.

Third, a comprehensive fraud statute should address ALL major players to effectively accomplish its goals of clearly defining standards for fraudulent claims practices, deterring fraudulent acts, punishing those who commit fraudulent acts and providing restitution to those defrauded.

It is requested that this committee consider:

1) Deleting the exemption for insurance companies found in the definition of “person” in §431:2-B;

2) Amending §431:2-C as follows:

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

3) by adding the phrase “or the processing of a claim;” at the end of §431:2-C(B); and

4) by adding the phrase “or to deny coverage or payment otherwise available under an insurance policy;” at the end of §431:2-C(J)

Section 431:2-E gives insurance companies the right to recover restitution, attorneys fees and costs from a consumer who commits insurance fraud, but does not permit a consumer to collecting restitution attorneys fees and costs from an insurance company that commits fraud against a consumer, unless insurance companies are included in the definition of a “person” as suggested above. 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 and deny consumers the right to restitution and attorneys fees and costs for insurance fraud committed by insurance companies.

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.

The Hawaii Association for Justice appreciates this opportunity to testify in opposition to H.B. No. 262, HD 2.