

JAN 23 2009

A BILL FOR AN ACT

RELATING TO INSURANCE FRAUD.

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 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
9 155, Session Laws of Hawaii 1998, was enacted the following year
10 to clarify the penalties for the offense of motor vehicle
11 insurance fraud and enhanced and clarified 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 at three to 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. Realizing that insurance fraud is
6 a growing problem in the area of health insurance, health
7 insurance fraud provisions were enacted in Act 125, Session Laws
8 of Hawaii 2003. None of the healthcare insurance fraud
9 provisions clearly designate a specific law enforcement agency
10 to be responsible for the investigation and prosecution of
11 insurance fraud violations.

12 No line of insurance is exempt from insurance fraud.
13 Rather than limit administrative, civil, and criminal penalties
14 for insurance fraud to only a few selected lines of insurance,
15 the legislature finds that Hawaii's insurance fraud law should
16 be expanded to include all lines of insurance to deter
17 perpetrators of insurance fraud.

18 The purpose of this Act is to:

- 19 (1) Establish the insurance fraud investigations branch to
20 replace the existing insurance fraud investigations
21 unit, and empower it to investigate and prosecute
22 insurance fraud in all lines of insurance;



1 (2) Establish administrative, civil, and criminal
2 penalties for offenses of insurance fraud in all lines
3 of insurance and for different types of insurance
4 fraud, including fraudulent applications and sales;
5 and

6 (3) Provide for the deposit of fines and settlements
7 resulting from successful insurance fraud prosecutions
8 into the compliance resolution fund to defray a
9 portion of the cost of prevention, investigation, and
10 prosecution of insurance fraud.

11 SECTION 2. Chapter 431, Hawaii Revised Statutes, is
12 amended by adding a new part to article 2 to be appropriately
13 designated and to read as follows:

14 **"PART . INSURANCE FRAUD**

15 **§431:2-A** Definitions. As used in this part:

16 "Branch" means the insurance fraud investigations branch of
17 the insurance division.

18 "Insurance policy" means a contract issued by an insurer or
19 other licensee, excluding a workers' compensation policy.

20 "Licensee" means an entity licensed under and governed by
21 title 24, including but not limited to an insurer governed by
22 chapter 431:10A, a mutual benefit society governed by chapter



1 432:1, a fraternal benefit society governed by chapter 432:2, or
2 a health maintenance organization governed by chapter 432D, and
3 an insurer governed by any other article in chapter 431, and
4 their respective agents and employees engaged in the business of
5 the licensee.

6 "Person" means any individual, company, association,
7 organization, group, partnership, business, trust, or
8 corporation; but shall exclude insurers, as defined in section
9 431:1-202, and licensees, as provided in this part.

10 **§431:2-B Insurance fraud investigations branch. (a)**

11 There is established the insurance fraud investigations branch
12 in the insurance division.

13 (b) The branch shall:

14 (1) Conduct a statewide program for the prevention of
15 insurance fraud relating to but not limited to title
16 24;

17 (2) Notwithstanding any other law to the contrary,
18 investigate and prosecute in administrative hearings
19 and courts of competent jurisdiction persons involved
20 in insurance fraud violations arising out of but not
21 limited to chapters 431, 432, and 432D; and



1 (3) Promote public and industry-wide education about
2 insurance fraud.

3 (c) The branch may review and take appropriate action on
4 complaints relating to insurance fraud.

5 (d) The commissioner may employ or retain, by contract or
6 otherwise, attorneys, investigators, investigator assistants,
7 auditors, accountants, physicians, health care professionals,
8 paralegals, consultants, experts, and other professional,
9 technical, and support staff as necessary to promote the
10 effective and efficient conduct of the branch's activities. The
11 commissioner may hire such employees without regard to chapters
12 76 and 89.

13 (e) Notwithstanding any other law to the contrary, an
14 attorney employed or retained by the branch may represent the
15 State in any criminal, civil, or administrative proceeding to
16 enforce all applicable state laws relating to insurance fraud,
17 including but not limited to criminal prosecutions, disciplinary
18 actions, and actions for declaratory and injunctive relief.

19 Each attorney, who is not regularly employed by the branch
20 representing the State in a proceeding, shall be designated by
21 the attorney general as a special deputy attorney general. The
22 decision to designate an attorney as a special deputy attorney



1 general shall be solely within the discretion of the attorney
2 general.

3 (f) Investigators, investigator assistants, and auditors
4 appointed and commissioned under this part shall have and may
5 exercise all of the powers and authority of a police officer or
6 of a deputy sheriff.

7 (g) Funding for the insurance fraud investigations branch
8 shall be from the compliance resolution fund established
9 pursuant to section 26-9(o).

10 **§431:2-C Insurance fraud.** (a) A person commits the
11 offense of insurance fraud if the person:

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

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



- 1 (B) When presenting, or causing or permitting to be
2 presented, false information on a claim for the
3 payment of a loss, whether typed, written, or
4 transmitted through electronic media;
- 5 (C) When presenting, or causing or permitting to be
6 presented, improper multiple duplicative claims
7 for the same loss or injury, including knowingly
8 presenting such multiple and duplicative claims
9 to more than one insurer;
- 10 (D) When presenting, or causing or permitting to be
11 presented, any claim for payment of a health care
12 benefit;
- 13 (E) When presenting, or causing or permitting to be
14 presented, a claim for a health care benefit that
15 was not used by, or provided on behalf of, the
16 claimant;
- 17 (F) When presenting, or causing or permitting to be
18 presented, improper multiple and duplicative
19 claims for payment of the same health care
20 benefit;
- 21 (G) When presenting, or causing or permitting to be
22 presented, for payment, any undercharges for



1 benefits on behalf of a specific claimant unless
2 any known overcharges for benefits under this
3 article for that claimant are presented for
4 reconciliation at the same time;

5 (H) When fabricating, altering, concealing, making an
6 entry in, or destroying a document whether typed,
7 written, or through an audio or video tape or
8 electronic media;

9 (I) When presenting, or causing or permitting to be
10 presented, to a person, insurer, or other
11 licensee false, incomplete, or misleading
12 information to obtain coverage or payment
13 otherwise available under an insurance policy;

14 (J) When presenting, or causing or permitting to be
15 presented, to a person or producer, information
16 about a person's status as a licensed producer
17 that induces a person or insurer to purchase an
18 insurance policy or reinsurance contract; and

19 (K) When making, or causing or permitting to be made,
20 any false or misleading statement, whether typed,
21 written, or through audio or video tape or
22 electronic media, by the person or on behalf of a



1 person with regard to obtaining legal recovery or
2 benefits;

3 (2) Intentionally or knowingly aids, agrees, or attempts
4 to aid, solicit, or conspire with any person who
5 engages in insurance fraud under this section; or

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

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

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

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



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

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

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

10 **§431:2-D Restitution.** Where the ability to make
11 restitution can be demonstrated, any person convicted under this
12 part, in addition to criminal penalties, shall be ordered by a
13 court to make restitution to any insurer, person, or other
14 licensee for any financial loss sustained by that insurer,
15 person, or licensee caused by the act or acts for which the
16 person was convicted.

17 **§431:2-E Insurance fraud; administrative penalties.** (a)
18 In addition to or in lieu of criminal penalties under section
19 431:2-C(b), any person who commits insurance fraud as defined
20 under section 431:2-C, may be subject to the administrative
21 penalties under this section.



1 (b) If a person is found to have knowingly committed
2 insurance fraud, the commissioner may assess any or all of the
3 following penalties:

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

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

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

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

19 (d) For the purpose of subsection (b), "knowingly" means
20 that a person has actual knowledge of the facts; and

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



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

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

5 **§431:2-F Administrative procedures.** (a) An
6 administrative penalty may be imposed based upon a judgment by a
7 court of competent jurisdiction or upon an order by the
8 commissioner.

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

12 **§431:2-G Acceptance of payment.** A provider's failure to
13 dispute a reduced payment by an insurer shall not constitute an
14 implied admission that a fraudulent billing had been submitted.

15 **§431:2-H Civil cause of action for insurance fraud;
16 exemption.** (a) An insurer or other licensee or the
17 commissioner shall have a civil cause of action to recover
18 payments or benefits from any person who has violated any
19 practice under section 431:2-C. No recovery shall be allowed if
20 the person has made restitution under section 431:2-D or
21 431:2-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 or 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 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 under chapter 92F and section
13 431:2-209; provided that the branch may release the information
14 in an administrative or judicial proceeding to enforce this
15 part, to federal, state, or local law enforcement or regulatory
16 authorities, the National Association of Insurance
17 Commissioners, the National Insurance Crime Bureau, or an
18 insurer or other licensee aggrieved by the alleged violation of
19 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,
 4 431:2-E(b) (1), or 431:2-H (for actions brought by the
 5 commissioner), shall be deposited into the compliance resolution
 6 fund established pursuant to section 26-9(o)."

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

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

18 (2) If the commissioner has cause to believe that any
 19 person has violated any penal provision of this code
 20 or of other laws relating to insurance, the
 21 commissioner may proceed against that person or shall
 22 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 section 431:2-215 ~~[-]~~ and part of article 2 of chapter 431."

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 insurance fraud
14 investigations branch shall be transferred with the functions to
15 which they relate.

16 SECTION 13. In codifying the new part added by chapter
17 431, Hawaii Revised Statutes, by section 2 of this Act, the
18 revisor of statutes shall substitute appropriate section numbers
19 for the letters used in designating the new sections in this
20 Act.

21 SECTION 14. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



1 SECTION 15. This Act shall take effect on July 1, 2009.

2

INTRODUCED BY: *Rosalyn H Baker*



Report Title:

Insurance Fraud

Description:

Expands the authority of the insurance division's insurance fraud investigations unit to all lines of insurance except workers' compensation.

