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# A BILL FOR AN ACT

RELATING TO EMERGENCY MEDICAL PHYSICIANS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Physicians in private practice who volunteer to  
2 serve on-call to assist hospital staff physicians provide  
3 critical medical services to the public. These physicians  
4 should not find it more difficult or expensive to obtain and  
5 maintain professional errors and omissions liability insurance  
6 coverage solely because they voluntarily participate on hospital  
7 on-call panels.

8           The purpose of this Act is to prohibit the use of a  
9 physician's on-call status, whether the physician does or does  
10 not participate on-call, from being considered for any purpose,  
11 including but not limited to the application, underwriting, and  
12 issuance of insurance coverage, the setting of premium rates,  
13 discounts, rebates, and the renewal or cancellation of insurance  
14 coverage.

15           SECTION 2. Chapter 435E, Hawaii Revised Statutes, is  
16 amended by adding a new section to part IV to be appropriately  
17 designated and to read as follows:

1           "§435E-    Consideration of on-call status prohibited.  
2 Inquiry into or consideration of a physician's participation in  
3 a hospital or emergency department on-call panel for any purpose  
4 related to professional errors and omissions liability coverage  
5 or indemnity for any licensed physician, including but not  
6 limited to the solicitation or application for or participation  
7 in any inter-indemnity, reciprocal, or inter-insurance  
8 arrangement, peer review, underwriting, acceptance or  
9 membership, setting of contributions, assessments, return of  
10 contributions, premium rates, discounts, rebates, or the  
11 continuation or termination of a membership or the renewal or  
12 cancellation of coverage or indemnity is prohibited.

13           For the purposes of this section "physician" means any  
14 person licensed under chapter 453 and includes any professional  
15 corporation, partnership, or other entity whose owners,  
16 stockholders or partners are comprised solely of persons  
17 licensed under chapter 453."

18           SECTION 3. Section 431:13-103, Hawaii Revised Statutes, is  
19 amended by amending subsection (a) to read as follows:

20           "(a) The following are defined as unfair methods of  
21 competition and unfair or deceptive acts or practices in the  
22 business of insurance:

- 1           (1) Misrepresentations and false advertising of insurance  
2           policies. Making, issuing, circulating, or causing to  
3           be made, issued, or circulated, any estimate,  
4           illustration, circular, statement, sales presentation,  
5           omission, or comparison which:
- 6           (A) Misrepresents the benefits, advantages,  
7                 conditions, or terms of any insurance policy;
- 8           (B) Misrepresents the dividends or share of the  
9                 surplus to be received on any insurance policy;
- 10          (C) Makes any false or misleading statement as to the  
11                 dividends or share of surplus previously paid on  
12                 any insurance policy;
- 13          (D) Is misleading or is a misrepresentation as to the  
14                 financial condition of any insurer, or as to the  
15                 legal reserve system upon which any life insurer  
16                 operates;
- 17          (E) Uses any name or title of any insurance policy or  
18                 class of insurance policies misrepresenting the  
19                 true nature thereof;
- 20          (F) Is a misrepresentation for the purpose of  
21                 inducing or tending to induce the lapse,

1 forfeiture, exchange, conversion, or surrender of  
2 any insurance policy;

3 (G) Is a misrepresentation for the purpose of  
4 effecting a pledge or assignment of or effecting  
5 a loan against any insurance policy;

6 (H) Misrepresents any insurance policy as being  
7 shares of stock;

8 (I) Publishes or advertises the assets of any insurer  
9 without publishing or advertising with equal  
10 conspicuousness the liabilities of the insurer,  
11 both as shown by its last annual statement; or

12 (J) Publishes or advertises the capital of any  
13 insurer without stating specifically the amount  
14 of paid-in and subscribed capital;

15 (2) False information and advertising generally. Making,  
16 publishing, disseminating, circulating, or placing  
17 before the public, or causing, directly or indirectly,  
18 to be made, published, disseminated, circulated, or  
19 placed before the public, in a newspaper, magazine, or  
20 other publication, or in the form of a notice,  
21 circular, pamphlet, letter, or poster, or over any  
22 radio or television station, or in any other way, an

1 advertisement, announcement, or statement containing  
2 any assertion, representation, or statement with  
3 respect to the business of insurance or with respect  
4 to any person in the conduct of the person's insurance  
5 business, which is untrue, deceptive, or misleading;

6 (3) Defamation. Making, publishing, disseminating, or  
7 circulating, directly or indirectly, or aiding,  
8 abetting, or encouraging the making, publishing,  
9 disseminating, or circulating of any oral or written  
10 statement or any pamphlet, circular, article, or  
11 literature which is false, or maliciously critical of  
12 or derogatory to the financial condition of an  
13 insurer, and which is calculated to injure any person  
14 engaged in the business of insurance;

15 (4) Boycott, coercion, and intimidation.

16 (A) Entering into any agreement to commit, or by any  
17 action committing, any act of boycott, coercion,  
18 or intimidation resulting in or tending to result  
19 in unreasonable restraint of, or monopoly in, the  
20 business of insurance; or

21 (B) Entering into any agreement on the condition,  
22 agreement, or understanding that a policy will

1 not be issued or renewed unless the prospective  
2 insured contracts for another class or an  
3 additional policy of the same class of insurance  
4 with the same insurer; provided that this  
5 subparagraph shall not apply to any insurer  
6 subject to chapter 432 with less than five per  
7 cent of the health insurance market share,  
8 offering contracts for dental, vision, drug, and  
9 life insurance as a condition, agreement, or  
10 understanding to a health insurance policy  
11 pursuant to chapter 432;

12 (5) False financial statements.

13 (A) Knowingly filing with any supervisory or other  
14 public official, or knowingly making, publishing,  
15 disseminating, circulating, or delivering to any  
16 person, or placing before the public, or  
17 knowingly causing, directly or indirectly, to be  
18 made, published, disseminated, circulated,  
19 delivered to any person, or placed before the  
20 public, any false statement of a material fact as  
21 to the financial condition of an insurer; or

- 1 (B) Knowingly making any false entry of a material  
2 fact in any book, report, or statement of any  
3 insurer with intent to deceive any agent or  
4 examiner lawfully appointed to examine into its  
5 condition or into any of its affairs, or any  
6 public official to whom the insurer is required  
7 by law to report, or who has authority by law to  
8 examine into its condition or into any of its  
9 affairs, or, with like intent, knowingly omitting  
10 to make a true entry of any material fact  
11 pertaining to the business of the insurer in any  
12 book, report, or statement of the insurer;
- 13 (6) Stock operations and advisory board contracts.  
14 Issuing or delivering or permitting agents, officers,  
15 or employees to issue or deliver, agency company stock  
16 or other capital stock, or benefit certificates or  
17 shares in any common-law corporation, or securities or  
18 any special or advisory board contracts or other  
19 contracts of any kind promising returns and profits as  
20 an inducement to insurance;
- 21 (7) Unfair discrimination.

- 1           (A) Making or permitting any unfair discrimination  
2           between individuals of the same class and equal  
3           expectation of life in the rates charged for any  
4           policy of life insurance or annuity contract or  
5           in the dividends or other benefits payable  
6           thereon, or in any other of the terms and  
7           conditions of the contract;
- 8           (B) Making or permitting any unfair discrimination in  
9           favor of particular individuals or persons, or  
10          between insureds or subjects of insurance having  
11          substantially like insuring, risk, and exposure  
12          factors, or expense elements, in the terms or  
13          conditions of any insurance contract, or in the  
14          rate or amount of premium charge therefor, or in  
15          the benefits payable or in any other rights or  
16          privilege accruing thereunder;
- 17          (C) Making or permitting any unfair discrimination  
18          between individuals or risks of the same class  
19          and of essentially the same hazards by refusing  
20          to issue, refusing to renew, canceling, or  
21          limiting the amount of insurance coverage on a



1 property or casualty risk because of the  
2 geographic location of the risk, unless:  
3 (i) The refusal, cancellation, or limitation is  
4 for a business purpose which is not a mere  
5 pretext for unfair discrimination; or  
6 (ii) The refusal, cancellation, or limitation is  
7 required by law or regulatory mandate;  
8 (D) Making or permitting any unfair discrimination  
9 between individuals or risks of the same class  
10 and of essentially the same hazards by refusing  
11 to issue, refusing to renew, canceling, or  
12 limiting the amount of insurance coverage on a  
13 residential property risk, or the personal  
14 property contained therein, because of the age of  
15 the residential property, unless:  
16 (i) The refusal, cancellation, or limitation is  
17 for a business purpose which is not a mere  
18 pretext for unfair discrimination; or  
19 (ii) The refusal, cancellation, or limitation is  
20 required by law or regulatory mandate;  
21 (E) Refusing to insure, refusing to continue to  
22 insure, or limiting the amount of coverage

1 available to an individual because of the sex or  
2 marital status of the individual; however,  
3 nothing in this subsection shall prohibit an  
4 insurer from taking marital status into account  
5 for the purpose of defining persons eligible for  
6 dependent benefits;

7 (F) Terminating or modifying coverage, or refusing to  
8 issue or renew any property or casualty policy or  
9 contract of insurance solely because the  
10 applicant or insured or any employee of either is  
11 mentally or physically impaired; provided that  
12 this subparagraph shall not apply to accident and  
13 health or sickness insurance sold by a casualty  
14 insurer; provided further that this subparagraph  
15 shall not be interpreted to modify any other  
16 provision of law relating to the termination,  
17 modification, issuance, or renewal of any  
18 insurance policy or contract;

19 (G) Refusing to insure, refusing to continue to  
20 insure, or limiting the amount of coverage  
21 available to an individual based solely upon the  
22 individual's having taken a human

1 immunodeficiency virus (HIV) test prior to  
2 applying for insurance; or  
3 (H) Refusing to insure, refusing to continue to  
4 insure, or limiting the amount of coverage  
5 available to an individual because the individual  
6 refuses to consent to the release of information  
7 which is confidential as provided in section  
8 325-101; provided that nothing in this  
9 subparagraph shall prohibit an insurer from  
10 obtaining and using the results of a test  
11 satisfying the requirements of the commissioner,  
12 which was taken with the consent of an applicant  
13 for insurance; provided further that any  
14 applicant for insurance who is tested for HIV  
15 infection shall be afforded the opportunity to  
16 obtain the test results, within a reasonable time  
17 after being tested, and that the confidentiality  
18 of the test results shall be maintained as  
19 provided by section 325-101;  
20 (8) Rebates. Except as otherwise expressly provided by  
21 law:

- 1 (A) Knowingly permitting or offering to make or  
2 making any contract of insurance, or agreement as  
3 to the contract other than as plainly expressed  
4 in the contract, or paying or allowing, or giving  
5 or offering to pay, allow, or give, directly or  
6 indirectly, as inducement to the insurance, any  
7 rebate of premiums payable on the contract, or  
8 any special favor or advantage in the dividends  
9 or other benefits, or any valuable consideration  
10 or inducement not specified in the contract; or  
11 (B) Giving, selling, or purchasing, or offering to  
12 give, sell, or purchase as inducement to the  
13 insurance or in connection therewith, any stocks,  
14 bonds, or other securities of any insurance  
15 company or other corporation, association, or  
16 partnership, or any dividends or profits accrued  
17 thereon, or anything of value not specified in  
18 the contract;
- 19 (9) Nothing in paragraph (7) or (8) shall be construed as  
20 including within the definition of discrimination or  
21 rebates any of the following practices:

- 1 (A) In the case of any life insurance policy or  
2 annuity contract, paying bonuses to policyholders  
3 or otherwise abating their premiums in whole or  
4 in part out of surplus accumulated from  
5 nonparticipating insurance; provided that any  
6 bonus or abatement of premiums shall be fair and  
7 equitable to policyholders and in the best  
8 interests of the insurer and its policyholders;
- 9 (B) In the case of life insurance policies issued on  
10 the industrial debit plan, making allowance to  
11 policyholders who have continuously for a  
12 specified period made premium payments directly  
13 to an office of the insurer in an amount which  
14 fairly represents the saving in collection  
15 expense;
- 16 (C) Readjustment of the rate of premium for a group  
17 insurance policy based on the loss or expense  
18 experience thereunder, at the end of the first or  
19 any subsequent policy year of insurance  
20 thereunder, which may be made retroactive only  
21 for the policy year; and

1 (D) In the case of any contract of insurance, the  
2 distribution of savings, earnings, or surplus  
3 equitably among a class of policyholders, all in  
4 accordance with this article;

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

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

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

14 (C) For entities licensed under chapter 432 or 432D:  
15 (i) It shall not be a violation of this section  
16 to refuse to provide or limit coverage  
17 available to an individual because the  
18 entity determines that the individual  
19 reasonably appears to have coverage  
20 available under chapter 386 or 431:10C; and

21 (ii) Payment of claims to an individual who may  
22 have a third-party claim for recovery of

1 damages may be conditioned upon the  
2 individual first signing and submitting to  
3 the entity documents to secure the lien and  
4 reimbursement rights of the entity and  
5 providing information reasonably related to  
6 the entity's investigation of its liability  
7 for coverage.

8 Any individual who knows or reasonably should  
9 know that the individual may have a third-party  
10 claim for recovery of damages and who fails to  
11 provide timely notice of the potential claim to  
12 the entity, shall be deemed to have waived the  
13 prohibition of this paragraph against refusal or  
14 limitation of coverage. "Third-party claim" for  
15 purposes of this paragraph means any tort claim  
16 for monetary recovery or damages that the  
17 individual has against any person, entity, or  
18 insurer, other than the entity licensed under  
19 chapter 432 or 432D;

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

- 1 (A) Misrepresenting pertinent facts or insurance
- 2 policy provisions relating to coverages at issue;
- 3 (B) With respect to claims arising under its
- 4 policies, failing to respond with reasonable
- 5 promptness, in no case more than fifteen working
- 6 days, to communications received from:
  - 7 (i) The insurer's policyholder;
  - 8 (ii) Any other persons, including the
  - 9 commissioner; or
  - 10 (iii) The insurer of a person involved in an
  - 11 incident in which the insurer's policyholder
  - 12 is also involved.
- 13 The response shall be more than an acknowledgment
- 14 that such person's communication has been
- 15 received, and shall adequately address the
- 16 concerns stated in the communication;
- 17 (C) Failing to adopt and implement reasonable
- 18 standards for the prompt investigation of claims
- 19 arising under insurance policies;
- 20 (D) Refusing to pay claims without conducting a
- 21 reasonable investigation based upon all available
- 22 information;



- 1 (E) Failing to affirm or deny coverage of claims  
2 within a reasonable time after proof of loss  
3 statements have been completed;
- 4 (F) Failing to offer payment within thirty calendar  
5 days of affirmation of liability, if the amount  
6 of the claim has been determined and is not in  
7 dispute;
- 8 (G) Failing to provide the insured, or when  
9 applicable the insured's beneficiary, with a  
10 reasonable written explanation for any delay, on  
11 every claim remaining unresolved for thirty  
12 calendar days from the date it was reported;
- 13 (H) Not attempting in good faith to effectuate  
14 prompt, fair, and equitable settlements of claims  
15 in which liability has become reasonably clear;
- 16 (I) Compelling insureds to institute litigation to  
17 recover amounts due under an insurance policy by  
18 offering substantially less than the amounts  
19 ultimately recovered in actions brought by the  
20 insureds;
- 21 (J) Attempting to settle a claim for less than the  
22 amount to which a reasonable person would have

- 1 believed the person was entitled by reference to  
2 written or printed advertising material  
3 accompanying or made part of an application;
- 4 (K) Attempting to settle claims on the basis of an  
5 application which was altered without notice,  
6 knowledge, or consent of the insured;
- 7 (L) Making claims payments to insureds or  
8 beneficiaries not accompanied by a statement  
9 setting forth the coverage under which the  
10 payments are being made;
- 11 (M) Making known to insureds or claimants a policy of  
12 appealing from arbitration awards in favor of  
13 insureds or claimants for the purpose of  
14 compelling them to accept settlements or  
15 compromises less than the amount awarded in  
16 arbitration;
- 17 (N) Delaying the investigation or payment of claims  
18 by requiring an insured, claimant, or the  
19 physician of either to submit a preliminary claim  
20 report and then requiring the subsequent  
21 submission of formal proof of loss forms, both of

1           which submissions contain substantially the same  
2           information;

3           (O) Failing to promptly settle claims, where  
4           liability has become reasonably clear, under one  
5           portion of the insurance policy coverage to  
6           influence settlements under other portions of the  
7           insurance policy coverage;

8           (P) Failing to promptly provide a reasonable  
9           explanation of the basis in the insurance policy  
10          in relation to the facts or applicable law for  
11          denial of a claim or for the offer of a  
12          compromise settlement; and

13          (Q) Indicating to the insured on any payment draft,  
14          check, or in any accompanying letter that the  
15          payment is "final" or is "a release" of any claim  
16          if additional benefits relating to the claim are  
17          probable under coverages afforded by the policy;  
18          unless the policy limit has been paid or there is  
19          a bona fide dispute over either the coverage or  
20          the amount payable under the policy;

21          (12) Failure to maintain complaint handling procedures.

22          Failure of any insurer to maintain a complete record

1 of all the complaints which it has received since the  
2 date of its last examination under section 431:2-302.  
3 This record shall indicate the total number of  
4 complaints, their classification by line of insurance,  
5 the nature of each complaint, the disposition of these  
6 complaints, and the time it took to process each  
7 complaint. For purposes of this section, "complaint"  
8 means any written communication primarily expressing a  
9 grievance;

10 (13) Misrepresentation in insurance applications. Making  
11 false or fraudulent statements or representations on  
12 or relative to an application for an insurance policy,  
13 for the purpose of obtaining a fee, commission, money,  
14 or other benefit from any insurer, producer, or  
15 individual; [~~and~~]

16 (14) Failure to obtain information. Failure of any  
17 insurance producer, or an insurer where no producer is  
18 involved, to comply with section 431:10D-623(a), (b),  
19 or (c) by making reasonable efforts to obtain  
20 information about a consumer before making a  
21 recommendation to the consumer to purchase or exchange  
22 an annuity[~~-~~]; and

1       (15) Inquiry into or consideration of a physician's  
2       participation in a hospital or emergency department  
3       on-call panel for any purpose related to professional  
4       errors and omissions liability coverage or indemnity  
5       for any licensed physician, including but not limited  
6       to the application process, underwriting, the  
7       acceptance and issuance of coverage, setting of  
8       premium rates, discounts, rebates, or the renewal or  
9       cancellation or coverage. For the purposes of this  
10      section, "physician" means any person licensed under  
11      chapter 453 and includes any professional corporation,  
12      partnership, or other entity whose owners,  
13      stockholders or partners are comprised solely of  
14      persons licensed under chapter 453."

15           SECTION 4. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17           SECTION 5. This Act shall take effect on July 1, 2009.

**Report Title:**

On-Call Emergency Room Physicians; Insurance; Prohibitions

**Description:**

Prohibits the use of a physician's on-call status from being considered for any purpose, including the application, underwriting, and issuance of insurance coverage, and the setting of premium rates, discounts, rebates, and the renewal or cancellation of insurance coverage. (SD1)