

ACT 155

S.B. NO. 2836

A Bill for an Act Relating to Insurance Fraud.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:2-204, Hawaii Revised Statutes, is amended to read as follows:

“§431:2-204 Commissioner’s power to subpoena. (a) The commissioner, either on the commissioner’s own behalf or on behalf of any interested party, may take depositions, and subpoena witnesses or documentary evidence. The commissioner may administer oaths, and examine under oath any individual relative to the affairs of any person being examined, or relative to the subject of any hearing or investigation.

(b) The subpoena shall have the same force and effect and shall be served in the same manner as if issued from a court of record.

(c) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a court of record. Witness fees, mileage, and the actual expense necessarily incurred in securing attendance of witnesses and their testimony shall be itemized, and shall be paid by the person as to whom the examination is being made, or by the person if other than the commissioner, at whose request the hearing is held.

(d) When the commissioner, through the insurance fraud investigations unit, is conducting an investigation of possible violations of section 431:10C-307.7, the commissioner shall pay to a financial institution that is served a subpoena issued under this section a fee for reimbursement of such costs as are necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, documents, or other objects designated by the subpoena. Reimbursement shall be paid at a rate not to exceed the rate set forth in section 28-2.5(d).”

SECTION 2. Section 431:10C-307.7, Hawaii Revised Statutes, is amended to read as follows:

“[[§431:10C-307.7] Fraud violations and] Insurance fraud; penalties. (a) A [fraudulent insurance act, under this article, shall include acts or omissions committed by any person who intentionally attempts] person commits the offense of insurance fraud if the person acts or omits to act with intent to obtain benefits or recovery or compensation for services provided, or provides legal assistance or counsel with intent to obtain benefits or recovery, through the following means:

- (1) [Presenting,] Knowingly presenting, or causing or permitting to be presented, any [intentionally] false information on a claim;
- (2) [Presenting,] Knowingly presenting, or causing or permitting to be presented, any [intentionally] false claim for the payment of a loss;
- (3) [Presenting] Knowingly presenting, or causing or permitting to be presented, multiple claims for the same loss or injury, including pre-

sending multiple claims to more than one insurer, except when these multiple claims are appropriate;

- (4) [Making,] Knowingly making, or causing or permitting to be made, any [intentionally] false claim for payment of a health care benefit;
 - (5) [Submitting] Knowingly submitting, or causing or permitting to be submitted, a claim for a health care benefit that was not used by, or provided on behalf of, the claimant;
 - (6) [Presenting inappropriate] Knowingly presenting, or causing or permitting to be presented, multiple claims for payment of the same health care benefit[;] except when these multiple claims are appropriate;
 - (7) [Presenting] Knowingly presenting, or causing or permitting to be presented, for payment any undercharges for benefits on behalf of a specific claimant unless any known overcharges for benefits under this article for that claimant are presented for reconciliation at [that] the same time;
 - (8) [Assisting, abetting,] Aiding, or agreeing or attempting to aid, soliciting, or conspiring with any person who engages in an unlawful act as defined under this section; or
 - (9) [Making] Knowingly making, or causing or permitting to be made, any [intentionally] false statements or claims by, or on behalf of, any person or persons [with regard to obtaining legal recovery or benefits.] during an official proceeding as defined by section 710-1000.
- (b) Violation of subsection (a) is a criminal offense and shall constitute a:
- (1) Class [C] B felony if the value of the [moneys] benefits, recovery, or compensation obtained or attempted to be obtained is more than [\$2,000;] \$20,000;
 - (2) Class C felony if the value of the benefits, recovery, or compensation obtained or attempted to be obtained is more than \$300; or
 - [(2)] (3) Misdemeanor if the value of the [moneys] benefits, recovery, or compensation obtained [or denied] or attempted to be obtained is less than [\$2,000; or] \$300.
 - [(3)] Petty misdemeanor if the providing of intentionally false information did not cause any monetary loss to any person.]

(c) Where the ability to make restitution can be demonstrated, any person [subject to a criminal penalty] convicted under this section shall be ordered by a court to make restitution to an insurer or any other person for any financial loss sustained by the insurer or other person caused by the [intentionally false act.] act or acts for which the person was convicted.

(d) A person, if acting without malice, shall not be subject to [criminal or] civil liability for [cooperating with authorities or any court order,] providing information, including filing a report, furnishing oral or written evidence, or giving testimony[, or information] concerning suspected, anticipated, or completed insurance fraud to a court, the commissioner, the insurance fraud investigations unit, the National Association of Insurance Commissioners, [or] any federal, state, or county law enforcement or regulatory agency, or another insurer if the information is provided only for the purpose of preventing, investigating, or prosecuting insurance fraud [under this section], except if the person commits perjury.

(e) This section shall not supersede any other law relating to theft, fraud, or deception. [A violation of this section] Insurance fraud may be prosecuted under this section, or any other applicable section[.], and may be enjoined by a court of competent jurisdiction.

(f) An insurer shall have a civil cause of action to recover payments or benefits from any person who has intentionally obtained payments or benefits in

violation of this section; provided that no recovery shall be allowed if the person has made restitution under subsection (c).

(g) All applications for insurance under this article and all claim forms provided and required by an insurer, regardless of the means of transmission, shall contain, or have attached to them, the following or a substantially similar statement, in a prominent location and typeface as determined by the insurer: “For your protection, Hawaii law requires you to be informed that presenting a fraudulent claim for payment of a loss or benefit is a crime punishable by fines or imprisonment, or both.” The absence of such a warning in any application or claim form shall not constitute a defense to a charge of insurance fraud under this section.

(h) An insurer, or the insurer’s employee or agent, having determined that there is reason to believe that a claim is being made in violation of this section, shall provide to the insurance fraud investigations unit within sixty days of that determination, information, including documents and other evidence, regarding the claim in the form and manner prescribed by the unit. Information provided pursuant to this subsection shall be protected from public disclosure to the extent authorized by chapter 92F and section 431:2-209; provided that the unit may release the information in an administrative or judicial proceeding to enforce this section, to a federal, state, or local law enforcement or regulatory authority, to the National Association of Insurance Commissioners, or to an insurer aggrieved by the claim reasonably believed to violate this section.”

SECTION 3. Section 431:10C-307.8, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The unit shall employ attorneys, investigators, investigator assistants, and other support staff as necessary to promote the effective and efficient conduct of the unit’s activities. Notwithstanding any other law to the contrary, the attorneys may represent the State in any judicial or administrative proceeding to enforce all applicable state laws relating to insurance fraud, including but not limited to criminal prosecutions and actions for declaratory and injunctive relief. Investigators may serve process and apply for and execute search warrants pursuant to chapter 803 and the rules of court but shall not otherwise have the powers of a police officer or deputy sheriff. The commissioner may hire such employees not subject to chapters 76 and 77.

(c) The purpose of the insurance fraud [[investigations]] unit shall be to conduct a statewide program for the prevention, investigation, and prosecution of insurance fraud cases and violations of all applicable state laws relating to insurance fraud. The insurance fraud [[investigations]] unit may also review and take appropriate action on complaints relating to insurance fraud.”

SECTION 4. Section 712A-4, Hawaii Revised Statutes, is amended to read as follows:

“§712A-4 Covered offenses. Offenses for which property is subject to forfeiture under this chapter are:

- (a) All offenses which specifically authorize forfeiture;
- (b) Murder, kidnapping, gambling, criminal property damage, robbery, bribery, extortion, theft, burglary, money laundering, trademark counterfeiting, insurance fraud, promoting a dangerous, harmful, or detrimental drug, or commercial promotion of marijuana, which is chargeable as a felony offense under state law;
- (c) The manufacture, sale, or distribution of a controlled substance in violation of chapter 329, promoting detrimental drugs or intoxicating

ACT 155

compounds, promoting pornography, promoting pornography for minors, or promoting prostitution, which is chargeable as a felony or misdemeanor offense, but not as a petty misdemeanor, under state law; and

- (d) The attempt, conspiracy, solicitation, coercion, or intimidation of another to commit any offense for which property is subject to forfeiture.’’

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved July 7, 1998.)