

ACT 49

H.B. NO. 1328

A Bill for an Act Relating to Sentencing of Repeat Offenders.

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

SECTION 1. Insurance fraud is reported to cost every United States household an average of \$500 per year. In Hawaii, the cost of motor vehicle insurance fraud alone has been estimated to be over \$164 annually per household. In recognition of the impact that fraud has on the cost of motor vehicle insurance, Act 251, Session Laws of Hawaii 1997, was enacted to establish an insurance fraud investigations unit, and motor vehicle insurance fraud violations and penalties. Act 155 and Act 275, Session Laws of Hawaii 1998, were enacted the following year to clarify the penalties for the offense of motor vehicle insurance fraud and enhance and clarify the powers and purpose of the insurance fraud investigations unit to combat motor vehicle insurance fraud.

Insurance fraud also has increasingly affected costs within the health insurance industry. Industry healthcare fraud losses are estimated to be as much as fourteen per cent of the \$1,200,000,000,000 in annual national healthcare costs. This is equivalent to approximately \$36,000,000,000 to \$144,000,000,000 annually. In Hawaii, based on the conservative estimate that insurance fraud amounts to three per cent of annual Hawaii healthcare costs, health insurance fraud causes losses that exceed \$60,000,000 annually. Because insurance fraud is a growing problem in the area of health insurance, the legislature enacted health insurance fraud provisions in Act 125, Session Laws of Hawaii 2003. Similar fraud provisions are in place for workers' compensation insurance.

Nationally, many repeat offender criminals and organized crime entities are now engaging in various insurance fraud schemes as a way to generate quick and safe money to fund other criminal endeavors. More and more criminals are turning

to white collar crime such as insurance fraud and identity theft as a way of defrauding and stealing from both the government and the general public.

In Hawaii, insurance fraud is not listed as one of the class C felony crimes that is covered as one of the repeat offender offenses. Knowing that many criminals and criminal entities use insurance fraud as a way to fund more dangerous or violent crimes and that many white collar criminals see this as a crime where the punishment is minimal, action should be taken to toughen the penalties for those who engage in repeated attempts to commit insurance fraud.

The purpose of this Act is to amend the sentencing of repeat offenders to include the insurance fraud penalty provisions located in chapters 386, 431, 432, and 432D, Hawaii Revised Statutes.

SECTION 2. Section 706-606.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) Notwithstanding section 706-669 and any other law to the contrary, any person convicted of murder in the second degree, any class A felony, any class B felony, or any of the following class C felonies: section 188-23 relating to possession or use of explosives, electrofishing devices, and poisonous substances in state waters; section 386-98(d)(1) relating to fraud violations and penalties; section 431:10A-131(b)(2) relating to insurance fraud; section 431:10C-307.7(b)(2) relating to insurance fraud; section 432:1-106(b)(2) relating to insurance fraud; section 432D-18.5(b)(2) relating to insurance fraud; section 707-703 relating to negligent homicide in the second degree; section 707-711 relating to assault in the second degree; section 707-713 relating to reckless endangering in the first degree; section 707-716 relating to terroristic threatening in the first degree; section 707-721 relating to unlawful imprisonment in the first degree; section 707-732 relating to sexual assault or rape in the third degree; section 707-752 relating to promoting child abuse in the third degree; section 707-757 relating to electronic enticement of a child in the second degree; section 707-766 relating to extortion in the second degree; section 708-811 relating to burglary in the second degree; section 708-821 relating to criminal property damage in the second degree; section 708-831 relating to theft in the first degree as amended by Act 68, Session Laws of Hawaii 1981; section 708-831 relating to theft in the second degree; section 708-835.5 relating to theft of livestock; section 708-836 relating to unauthorized control of propelled vehicle; ~~[§]section[§]~~ 708-839.8 relating to identity theft in the third degree; ~~[§]section[§]~~ 708-839.55 relating to unauthorized possession of confidential personal information; section 708-852 relating to forgery in the second degree; section 708-854 relating to criminal possession of a forgery device; section 708-875 relating to trademark counterfeiting; section 710-1071 relating to intimidating a witness; section 711-1103 relating to riot; section 712-1203 relating to promoting prostitution in the second degree; section 712-1221 relating to gambling in the first degree; section 712-1224 relating to possession of gambling records in the first degree; section 712-1243 relating to promoting a dangerous drug in the third degree; section 712-1247 relating to promoting a detrimental drug in the first degree; section 134-7 relating to ownership or possession of firearms or ammunition by persons convicted of certain crimes; section 134-8 relating to ownership, etc., of prohibited weapons; section 134-9 relating to permits to carry, or who is convicted of attempting to commit murder in the second degree, any class A felony, any class B felony, or any of the class C felony offenses enumerated above and who has a prior conviction or prior convictions for the following felonies, including an attempt to commit the same: murder, murder in the first or second degree, a class A felony, a class B felony, any of the class C felony offenses enumerated above, or any felony conviction of another

jurisdiction, shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole during such period as follows:

- (a) One prior felony conviction:
 - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—ten years;
 - (ii) Where the instant conviction is for a class A felony—six years, eight months;
 - (iii) Where the instant conviction is for a class B felony—three years, four months;
 - (iv) Where the instant conviction is for a class C felony offense enumerated above—one year, eight months;
- (b) Two prior felony convictions:
 - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—twenty years;
 - (ii) Where the instant conviction is for a class A felony—thirteen years, four months;
 - (iii) Where the instant conviction is for a class B felony—six years, eight months;
 - (iv) Where the instant conviction is for a class C felony offense enumerated above—three years, four months;
- (c) Three or more prior felony convictions:
 - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—thirty years;
 - (ii) Where the instant conviction is for a class A felony—twenty years;
 - (iii) Where the instant conviction is for a class B felony—ten years;
 - (iv) Where the instant conviction is for a class C felony offense enumerated above—five years.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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

SECTION 5. This Act shall take effect on July 1, 2007.

(Approved May 1, 2007.)