

S.B. NO. 1413

JAN 22 2007

A BILL FOR AN ACT

RELATING TO INSURANCE FRAUD.

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

1 SECTION 1. Chapter 431, Hawaii Revised Statutes, is
2 amended by adding to article 2 two new sections to be
3 appropriately designated and to read as follows:

4 "§431:2-A Insurance fraud investigations unit; deposit
5 into compliance resolution fund; funding. (a) There is
6 established in the insurance division an insurance fraud
7 investigations unit.

8 (b) 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 relating to insurance fraud, arising from article 10C
12 and chapter 386. The insurance fraud investigations unit may
13 also review and take appropriate disciplinary and administrative
14 action on complaints relating to insurance fraud arising from
15 article 10C and chapter 386.

16 (c) The unit shall employ or retain by contract or
17 otherwise, attorneys, investigators, investigator assistants, and

1 other support staff as necessary to promote the effective and
2 efficient conduct of the unit's activities. Notwithstanding any
3 other law to the contrary, the attorneys may represent the State
4 in any judicial or administrative proceeding to enforce all
5 applicable state laws relating to insurance fraud, including but
6 not limited to criminal prosecutions, administrative actions,
7 disciplinary actions, and actions for declaratory and injunctive
8 relief. Investigators may serve process and apply for and
9 execute search warrants pursuant to chapter 803 and the rules of
10 court but shall not otherwise have the powers of a police officer
11 or deputy sheriff. The commissioner may hire such employees not
12 subject to chapter 76.

13 (d) All moneys that have been recovered by the department
14 of commerce and consumer affairs as a result of prosecuting
15 insurance fraud violations pursuant to this section, including
16 civil fines, criminal fines, administrative fines, and
17 settlements, but not including restitution made pursuant to
18 section 431:2-B or 386-98, shall be deposited into the compliance
19 resolution fund established pursuant to section 26-9(o).

20 (e) Funding for the insurance fraud investigations unit
21 shall come from the compliance resolution fund established
22 pursuant to section 26-9(o).

1 §431:2-B Insurance fraud; penalties. (a) A person commits
2 the offense of insurance fraud if the person acts or omits to act
3 with intent to obtain benefits or recovery or compensation for
4 services provided, or provides legal assistance or counsel with
5 intent to obtain benefits or recovery, through the following
6 means:

7 (1) Knowingly presenting, or causing or permitting to be
8 presented, any false information on a claim;

9 (2) Knowingly presenting, or causing or permitting to be
10 presented, any false claim for the payment of a loss;

11 (3) Knowingly presenting, or causing or permitting to be
12 presented, multiple claims for the same loss or injury,
13 including presenting multiple claims to more than one
14 insurer, except when these multiple claims are
15 appropriate;

16 (4) Knowingly making, or causing or permitting to be made,
17 any false claim for payment of a health care benefit;

18 (5) Knowingly submitting, or causing or permitting to be
19 submitted, a claim for a health care benefit that was
20 not used by, or provided on behalf of, the claimant;

21 (6) Knowingly presenting, or causing or permitting to be
22 presented, multiple claims for payment of the same

1 health care benefit except when these multiple claims
2 are appropriate;

3 (7) Knowingly presenting, or causing or permitting to be
4 presented, for payment, any undercharges for benefits
5 on behalf of a specific claimant unless any known
6 overcharges for benefits under this article for that
7 claimant are presented for reconciliation at the same
8 time;

9 (8) Aiding, or agreeing or attempting to aid, soliciting,
10 or conspiring with any person who engages in an
11 unlawful act as defined under this section; or

12 (9) Knowingly making, or causing or permitting to be made,
13 any false statements or claims by, or on behalf of, any
14 person or persons during an official proceeding as
15 defined by section 710-1000.

16 (b) A violation of subsection (a) is a criminal offense and
17 shall constitute a:

18 (1) Class B felony if the value of the benefits, recovery,
19 claim, or compensation obtained or attempted to be
20 obtained is more than \$20,000;

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1 (2) Class C felony if the value of the benefits, recovery,
2 claim, or compensation obtained or attempted to be
3 obtained is more than \$300; or

4 (3) Misdemeanor if the value of the benefits, recovery,
5 claim, or compensation obtained or attempted to be
6 obtained is \$300 or less.

7 (c) Where the ability to make restitution can be
8 demonstrated, any person convicted under this section shall be
9 ordered by a court to make restitution to an insurer or any other
10 person for any financial loss sustained by the insurer or other
11 person.

12 (d) A person, if acting without malice, shall not be
13 subject to civil liability for providing information, including
14 filing a report, furnishing oral or written evidence, or giving
15 testimony concerning suspected, anticipated, or completed
16 insurance fraud to a court, the commissioner, the insurance fraud
17 investigations unit, the National Association of Insurance
18 Commissioners, any federal, state, or county law enforcement or
19 regulatory agency, or another insurer if the information is
20 provided only for the purpose of preventing, investigating, or
21 prosecuting insurance fraud, except if the person commits
22 perjury.

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

5 (f) An insurer shall have a civil cause of action to
6 recover payments or benefits from any person who has
7 intentionally obtained payments or benefits in violation of this
8 section; provided that no recovery shall be allowed if the person
9 has made restitution under subsection (c).

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

21 (h) An insurer, or the insurer's employee or agent, having
22 determined that there is reason to believe that a claim is being

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1 made in violation of this section, shall provide to the insurance
2 fraud investigations unit within sixty days of that
3 determination, information, including documents and other
4 evidence, regarding the claim in the form and manner prescribed
5 by the unit. Information provided pursuant to this subsection
6 shall be protected from public disclosure to the extent
7 authorized by chapter 92F and section 431:2-209; provided that
8 the unit may release the information in an administrative or
9 judicial proceeding to enforce this section, to a federal, state,
10 or local law enforcement or regulatory authority, to the National
11 Association of Insurance Commissioners, or to an insurer
12 aggrieved by the claim reasonably believed to violate this
13 section."

14 SECTION 2. Section 386-98, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§386-98 **Fraud violations and penalties.** (a) A
17 [~~fraudulent insurance act, under this chapter, shall include~~
18 ~~acts or omissions committed by any person who intentionally or~~
19 ~~knowingly] person commits the offense of insurance fraud if the
20 person acts or omits to act [se-as] with intent to obtain
21 benefits, deny benefits, obtain benefits compensation for
22 services provided, or provides legal assistance or counsel to~~

1 obtain benefits [~~or recovery through fraud or deceit by doing~~
2 ~~the following~~], deny benefits, or obtain benefits compensation
3 through the following means:

- 4 (1) [~~Presenting~~] Knowingly presenting, or causing or
5 permitting to be presented, any false information on
6 an application;
- 7 (2) [~~Presenting~~] Knowingly presenting, or causing or
8 permitting to be presented, any false [~~or fraudulent~~]
9 claim for the payment of a loss;
- 10 (3) [~~Presenting~~] Knowingly presenting, or causing or
11 permitting to be presented, multiple claims for the
12 same loss or injury, including presenting multiple
13 claims to more than one insurer, except when these
14 multiple claims are appropriate [~~and each insurer is~~
15 notified immediately in writing of all other claims
16 and insurers];
- 17 (4) [~~Making~~] Knowingly making, or causing or permitting
18 to be made, any false [~~or fraudulent~~] claim for
19 payment or denial of a health care benefit;
- 20 (5) [~~Submitting~~] Knowingly submitting, or causing or
21 permitting to be submitted, a claim for a health care
22 benefit that was not used by, or provided on behalf

1 of, the claimant;

2 (6) [~~Presenting~~] Knowingly presenting, or causing or
3 permitting to be presented, multiple claims for
4 payment of the same health care benefit, except when
5 these multiple claims are appropriate;

6 (7) [~~Presenting~~] Knowingly presenting, or causing or
7 permitting to be presented, for payment any
8 undercharges for health care benefits on behalf of a
9 specific claimant unless any known overcharges for
10 health care benefits for that claimant are presented
11 for reconciliation at [~~that~~] the same time;

12 (8) Misrepresenting or concealing a material fact;

13 (9) Fabricating, altering, concealing, making a false
14 entry in, or destroying a document;

15 (10) [~~Making,~~] Knowingly making, or causing or permitting
16 to be made, any false [~~or fraudulent~~] statements with
17 regard to entitlements or benefits, with the intent to
18 discourage an injured employee from claiming benefits
19 or pursuing a workers' compensation claim; or

20 (11) [~~Making,~~] Knowingly making, or causing to be made, any
21 false [~~or fraudulent~~] statements or claims by, or on
22 behalf of, a client with regard to obtaining legal

1 recovery or benefits.

2 (b) No employer shall wilfully make a false statement or
3 representation to avoid the impact of past adverse claims
4 experience through change of ownership, control, management, or
5 operation to directly obtain any workers' compensation insurance
6 policy.

7 (c) It shall be inappropriate for any discussion on
8 benefits, recovery, or settlement to include the threat or
9 implication of criminal prosecution. Any threat or implication
10 shall be immediately referred in writing to:

- 11 (1) The state bar if attorneys are in violation;
12 (2) The insurance commissioner if insurance company
13 personnel are in violation; or
14 (3) The regulated industries complaints office if health
15 care providers are in violation,

16 for investigation and, if appropriate, disciplinary action.

17 (d) An offense under subsections (a) and (b) shall
18 constitute a:

- 19 (1) Class C felony if the value of the moneys obtained or
20 denied is \$2,000 or more;
21 (2) Misdemeanor if the value of the moneys obtained or
22 denied is less than \$2,000; or

1 (3) Petty misdemeanor if the providing of false
2 information did not cause any monetary loss.

3 Any person subject to a criminal penalty under this section
4 shall be ordered by a court to make restitution to an insurer or
5 any other person for any financial loss sustained by the insurer
6 or other person caused by the fraudulent act.

7 (e) In lieu of or in addition to the criminal penalties
8 set forth in subsection (d), any person who violates subsections
9 (a) and (b) may be subject to the administrative penalties of
10 restitution of benefits or payments fraudulently received under
11 this chapter, whether received from an employer, insurer, or the
12 special compensation fund, to be made to the source from which
13 the compensation was received, and one or more of the following:

- 14 (1) A fine of not more than \$10,000 for each violation;
- 15 (2) Suspension or termination of benefits in whole or in
16 part;
- 17 (3) Suspension or disqualification from providing medical
18 care or services, vocational rehabilitation services,
19 and all other services rendered for payment under this
20 chapter;
- 21 (4) Suspension or termination of payments for medical,
22 vocational rehabilitation, and all other services

1 rendered under this chapter;

2 (5) Recoupment by the insurer of all payments made for
3 medical care, medical services, vocational
4 rehabilitation services, and all other services
5 rendered for payment under this chapter; and

6 (6) Reimbursement of attorney's fees and costs of the
7 party or parties defrauded.

8 (f) With respect to the administrative penalties set forth
9 in subsection (e), no penalty shall be imposed except upon
10 consideration of a written complaint that specifically alleges a
11 violation of this section occurring within two years of the date
12 of said complaint. A copy of the complaint specifying the
13 alleged violation shall be served promptly upon the person
14 charged. The director or board shall issue, where a penalty is
15 ordered, a written decision stating all findings following a
16 hearing held not fewer than twenty days after written notice to
17 the person charged. Any person aggrieved by the decision may
18 appeal the decision under sections 386-87 and 386-88.

19 (g) The insurance fraud investigations unit of the
20 department of commerce and consumer affairs, established
21 pursuant to section 431:2-A, may initiate investigations,
22 prosecutions, and disciplinary and administrative actions to

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1 enforce this section, including, but not limited to, workers'
2 compensation fraud relating to self-insured employers."

3 SECTION 3. Section 431:10C-307.7, Hawaii Revised Statutes,
4 is repealed.

5 [~~"§431:10C-307.7 Insurance fraud; penalties. (a) A person~~
6 ~~commits the offense of insurance fraud if the person acts or~~
7 ~~omits to act with intent to obtain benefits or recovery or~~
8 ~~compensation for services provided, or provides legal assistance~~
9 ~~or counsel with intent to obtain benefits or recovery, through~~
10 ~~the following means:~~

- 11 ~~(1) Knowingly presenting, or causing or permitting to be~~
12 ~~presented, any false information on a claim;~~
13 ~~(2) Knowingly presenting, or causing or permitting to be~~
14 ~~presented, any false claim for the payment of a loss;~~
15 ~~(3) Knowingly presenting, or causing or permitting to be~~
16 ~~presented, multiple claims for the same loss or injury,~~
17 ~~including presenting multiple claims to more than one~~
18 ~~insurer, except when these multiple claims are~~
19 ~~appropriate;~~
20 ~~(4) Knowingly making, or causing or permitting to be made,~~
21 ~~any false claim for payment of a health care benefit;~~

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- 1 ~~(5) Knowingly submitting, or causing or permitting to be~~
- 2 ~~submitted, a claim for a health care benefit that was~~
- 3 ~~not used by, or provided on behalf of, the claimant;~~
- 4 ~~(6) Knowingly presenting, or causing or permitting to be~~
- 5 ~~presented, multiple claims for payment of the same~~
- 6 ~~health care benefit except when these multiple claims~~
- 7 ~~are appropriate;~~
- 8 ~~(7) Knowingly presenting, or causing or permitting to be~~
- 9 ~~presented, for payment any undercharges for benefits on~~
- 10 ~~behalf of a specific claimant unless any known~~
- 11 ~~overcharges for benefits under this article for that~~
- 12 ~~claimant are presented for reconciliation at the same~~
- 13 ~~time;~~
- 14 ~~(8) Aiding, or agreeing or attempting to aid, soliciting,~~
- 15 ~~or conspiring with any person who engages in an~~
- 16 ~~unlawful act as defined under this section; or~~
- 17 ~~(9) Knowingly making, or causing or permitting to be made,~~
- 18 ~~any false statements or claims by, or on behalf of, any~~
- 19 ~~person or persons during an official proceeding as~~
- 20 ~~defined by section 710 1000.~~
- 21 ~~(b) Violation of subsection (a) is a criminal offense and~~
- 22 ~~shall constitute a:~~

1 ~~(1) Class B felony if the value of the benefits, recovery,~~
2 ~~or compensation obtained or attempted to be obtained is~~
3 ~~more than \$20,000;~~

4 ~~(2) Class C felony if the value of the benefits, recovery,~~
5 ~~or compensation obtained or attempted to be obtained is~~
6 ~~more than \$300; or~~

7 ~~(3) Misdemeanor if the value of the benefits, recovery, or~~
8 ~~compensation obtained or attempted to be obtained is~~
9 ~~\$300 or less.~~

10 ~~(e) Where the ability to make restitution can be~~
11 ~~demonstrated, any person convicted under this section shall be~~
12 ~~ordered by a court to make restitution to an insurer or any other~~
13 ~~person for any financial loss sustained by the insurer or other~~
14 ~~person caused by the act or acts for which the person was~~
15 ~~convicted.~~

16 ~~(d) A person, if acting without malice, shall not be~~
17 ~~subject to civil liability for providing information, including~~
18 ~~filing a report, furnishing oral or written evidence, or giving~~
19 ~~testimony concerning suspected, anticipated, or completed~~
20 ~~insurance fraud to a court, the commissioner, the insurance fraud~~
21 ~~investigations unit, the National Association of Insurance~~
22 ~~Commissioners, any federal, state, or county law enforcement or~~

1 ~~regulatory agency, or another insurer if the information is~~
2 ~~provided only for the purpose of preventing, investigating, or~~
3 ~~prosecuting insurance fraud, except if the person commits~~
4 ~~perjury.~~

5 ~~(e) This section shall not supersede any other law relating~~
6 ~~to theft, fraud, or deception. Insurance fraud may be prosecuted~~
7 ~~under this section, or any other applicable section, and may be~~
8 ~~enjoined by a court of competent jurisdiction.~~

9 ~~(f) An insurer shall have a civil cause of action to~~
10 ~~recover payments or benefits from any person who has~~
11 ~~intentionally obtained payments or benefits in violation of this~~
12 ~~section; provided that no recovery shall be allowed if the person~~
13 ~~has made restitution under subsection (e).~~

14 ~~(g) All applications for insurance under this article and~~
15 ~~all claim forms provided and required by an insurer, regardless~~
16 ~~of the means of transmission, shall contain, or have attached to~~
17 ~~them, the following or a substantially similar statement, in a~~
18 ~~prominent location and typeface as determined by the insurer:~~
19 ~~"For your protection, Hawaii law requires you to be informed that~~
20 ~~presenting a fraudulent claim for payment of a loss or benefit is~~
21 ~~a crime punishable by fines or imprisonment, or both." The~~
22 ~~absence of such a warning in any application or claim form shall~~

1 ~~not constitute a defense to a charge of insurance fraud under~~
2 ~~this section.~~

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

18 SECTION 4. Section 431:10C-307.8, Hawaii Revised Statutes,
19 is repealed.

20 [~~§431:10C-307.8 Insurance fraud investigations unit. (a)~~
21 ~~There is established in the insurance division an insurance fraud~~
22 ~~investigations unit.~~

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

14 ~~(c) The purpose of the insurance fraud investigations unit~~
15 ~~shall be to conduct a statewide program for the prevention,~~
16 ~~investigation, and prosecution of insurance fraud cases and~~
17 ~~violations of all applicable state laws relating to insurance~~
18 ~~fraud. The insurance fraud investigations unit may also review~~
19 ~~and take appropriate action on complaints relating to insurance~~
20 ~~fraud."]~~

21 SECTION 5. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.

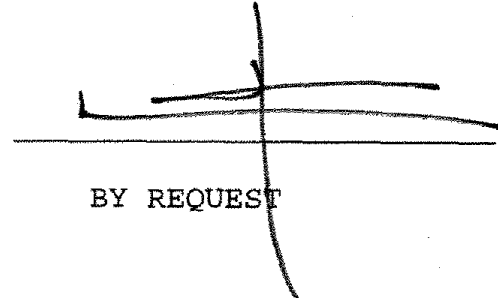
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1 SECTION 6. This Act shall take effect on July 1, 2007.

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INTRODUCED BY:



4

BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE FRAUD.

PURPOSE: To expand the authority of the insurance division's insurance fraud investigations unit for the prevention, investigation, and prosecution (by administrative, disciplinary, or criminal action) of insurance fraud within the workers' compensation insurance line to protect Hawaii's consumers and the insurance industry from the high cost of insurance fraud.

MEANS: Add two new sections to article 2 of chapter 431, Hawaii Revised Statutes (HRS), amend section 386-98, HRS, and repeal sections 431:10C-307.7 and 431:10C-307.8, HRS.

JUSTIFICATION: In 1997, the Legislature found it necessary to protect Hawaii's citizens from the growing cost of motor vehicle insurance fraud, and enacted Act 251, Session Laws of Hawaii 1997. Among other things, Act 251 established the insurance fraud investigations unit in the insurance division and gave it the powers to address motor vehicle insurance fraud.

Presently, the insurance fraud investigations unit's authority to investigate and prosecute remains limited to motor vehicle insurance matters. As a result, though the Legislature enacted section 386-98, creating insurance fraud penalties for the workers' compensation line of insurance, little or no investigation or prosecution has occurred in this area.

This bill provides the insurance fraud investigations unit with the authority and

tools it needs to investigate and prosecute insurance fraud relating to workers' compensation insurance, in addition to its authority relating to motor vehicle insurance. The bill accomplishes this by: (1) repealing section 431:10C-307.8, which established the insurance fraud investigations unit in the motor vehicle article of the insurance code; (2) re-establishing the unit through a new section in article 2, chapter 431, with language specifying the unit's authority to conduct a statewide program for prevention, investigation, and prosecution of insurance fraud cases and violations arising from article 10C (relating to motor vehicle insurance) and chapter 386 (relating to workers' compensation insurance); (3) repealing section 431:10C-307.7, which establishes the offense of insurance fraud and penalties for insurance fraud violations; and (4) re-establishing the provisions of section 431:10C-307.7 in article 2, chapter 431.

The bill amends section 386-98 (relating to workers' compensation insurance fraud) by: (1) adding a new subsection authorizing the insurance fraud investigations unit to initiate investigations, prosecutions, and disciplinary and administrative actions to enforce the section; and (2) conforming the language of this section with the insurance fraud language in article 2, chapter 431, HRS.

Finally, the bill authorizes funding for the insurance fraud investigations unit from the compliance resolution fund and mandates that moneys recovered by the unit from insurance fraud be deposited into the fund. This includes all civil, criminal, and administrative fines and settlements, but not moneys paid for restitution. This will allow the insurance fraud investigations unit to help fund some of its cost in preventing, investigating, and prosecuting

insurance fraud.

Impact on the public: There should be a positive impact on the public as the insurance division will be allowed to address insurance fraud in the workers' compensation line of insurance in addition to the motor vehicle line of insurance. Policyholders will save money from the reduction of fraudulent claims and policies.

Impact on the department and other agencies: This bill will have the positive effect of lessening the workload of other state law enforcement agencies by allowing the insurance fraud investigations branch to take action in preventing, investigating, and prosecuting insurance fraud in both motor vehicle and workers' compensation lines of insurance. With the passage of this bill a more comprehensive approach can be taken to deter perpetrators of insurance fraud. No additional staffing is being requested with the initial passage of this bill. The insurance division will evaluate additional staffing needs at a future date, should it be determined that additional staffing may result in greater prevention and deterrence in stopping insurance fraud.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: CCA-106.

OTHER AFFECTED AGENCIES: Department of Labor and Industrial Relations, Disability Compensation Division; Department of the Attorney General; and Department of Human Resources Development.

EFFECTIVE DATE: July 1, 2007.