
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 (SLH) 1997,
7 was enacted to establish an insurance fraud investigations unit,
8 and motor vehicle insurance fraud violations and penalties. Act
9 155, SLH 1998, were enacted the following year to clarify the
10 penalties for the offense of motor vehicle insurance fraud and
11 enhanced and clarified the powers and purpose of the insurance
12 fraud investigations unit to combat motor vehicle insurance
13 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
18 equivalent to approximately \$36,000,000,000 to \$144,000,000,000



1 annually. In Hawaii, based on the conservative estimate that
2 insurance fraud amounts to three per cent of annual Hawaii
3 healthcare costs, health insurance fraud causes losses that
4 exceed \$60,000,000 annually. Realizing that insurance fraud is
5 a growing problem in the area of health insurance, health
6 insurance fraud provisions were enacted in Act 125, Session Laws
7 of Hawaii 2003. None of the healthcare insurance fraud
8 provisions clearly designates a specific law enforcement agency
9 to be responsible for the investigation and prosecution of
10 insurance fraud violations.

11 No line of insurance is exempt from insurance fraud.
12 Rather than limit administrative, civil, and criminal penalties
13 for insurance fraud to only a few selected lines of insurance,
14 Hawaii's insurance fraud law should be expanded to include all
15 lines of insurance to deter perpetrators of insurance fraud by
16 demonstrating that no line of insurance will be a safe haven for
17 those who commit insurance fraud.

18 The purpose of this Act is to establish:

19 (1) The insurance fraud investigations branch to replace
20 the existing insurance fraud investigations unit
21 established in Act 251, SLH 1997, which was expanded
22 by Act 155, SLH 1998, and empower it to investigate



1 and prosecute insurance fraud in all lines of
2 insurance;

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

7 (3) That fines and settlements resulting from successful
8 insurance fraud prosecutions are to be deposited into
9 the compliance resolution fund to help the insurance
10 fraud investigations branch cover some of the cost of
11 its own operation to prevent, investigate, and
12 prosecute insurance fraud.

13 It is not the purpose of this Act to create an insurance fraud
14 investigating unit for cases and violations related to workers
15 compensation or arising from chapter 386, Hawaii Revised
16 Statutes.

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

20 "PART . INSURANCE FRAUD

21 §431:2-A Definitions. As used in this part:



1 "Branch" means the insurance fraud investigations branch of
2 the insurance division.

3 "Insurance policy" means a contract issued by an insurer or
4 other licensee.

5 "Licensee" means an entity licensed under and governed by
6 title 24, including but not limited to an insurer governed by
7 chapter 431, a mutual benefit society governed by article 1 of
8 chapter 432, a fraternal benefit society governed by article 2
9 of chapter 432, or a health maintenance organization governed by
10 chapter 432D, and their respective agents and employees engaged
11 in the business of the licensee.

12 "Person" means any individual, company, association,
13 organization, group, partnership, business, trust, or
14 corporation; but shall exclude insurers, as defined in section
15 431:1-202, and other licensees, as defined in this part.

16 **§431:2-B Insurance fraud investigations branch. (a)**

17 There is established in the insurance division the insurance
18 fraud investigations branch.

19 (b) The branch shall:

20 (1) Conduct a statewide program for the prevention of
21 insurance fraud relating to but not limited to title
22 24;



1 (2) Notwithstanding any other law to the contrary,
2 investigate and prosecute in administrative hearings
3 and courts of competent jurisdiction all persons
4 involved in insurance fraud violations arising out of
5 but not limited to chapters 431, 432, and 432D; and

6 (3) Promote public and industry-wide education about
7 insurance fraud.

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

10 (d) The commissioner shall employ or retain, by contract
11 or otherwise, attorneys, investigators, investigator assistants,
12 auditors, accountants, physicians, health care professionals,
13 paralegals, consultants, experts, and other professional,
14 technical, and support staff as necessary to promote the
15 effective and efficient conduct of the branch's activities. The
16 commissioner may hire such employees without regard to chapter
17 76.

18 (e) Notwithstanding any other law to the contrary, an
19 attorney employed or retained by the branch may represent the
20 State in any criminal, civil, or administrative proceeding to
21 enforce all applicable state laws relating to insurance fraud,
22 including but not limited to criminal prosecutions, disciplinary

1 actions, and actions for declaratory and injunctive relief.
2 Each attorney representing the State in such a proceeding shall
3 be designated by the attorney general as a special deputy
4 attorney general. The decision to designate an attorney as a
5 special deputy attorney general shall be solely within the
6 discretion of the attorney general.

7 (f) Investigators, investigator assistants, and auditors
8 appointed and commissioned under this part shall have and may
9 exercise all of the powers and authority of a police officer or
10 of a deputy sheriff.

11 (g) Funding for the insurance fraud investigations branch
12 shall come from the compliance resolution fund established
13 pursuant to section 26-9(o).

14 **§431:2-C Insurance fraud.** (a) A person commits the
15 offense of insurance fraud if the person:

16 (1) Intentionally or knowingly misrepresents or conceals
17 material facts, opinions, intention, or law to obtain
18 or attempt to obtain coverage, benefits, recovery, or
19 compensation for services provided in the following
20 situations or circumstances:

21 (A) When presenting, or causing or permitting to be
22 presented, an application, whether written,



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



- 1 (G) When presenting, or causing or permitting to be
2 presented, improper multiple and duplicative
3 claims for payment of the same health care
4 benefit;
- 5 (H) When presenting, or causing or permitting to be
6 presented, for payment, any undercharges for
7 benefits on behalf of a specific claimant unless
8 any known overcharges for benefits under this
9 article for that claimant are presented for
10 reconciliation at the same time;
- 11 (I) When fabricating, altering, concealing, making an
12 entry in, or destroying a document whether typed,
13 written, or through an audio or video tape or
14 electronic media;
- 15 (J) When presenting, or causing or permitting to be
16 presented, to a person, insurer, or other
17 licensee false, incomplete, or misleading
18 information to obtain coverage or payment
19 otherwise available under an insurance policy;
- 20 (K) When presenting, or causing or permitting to be
21 presented, to a person or producer, information
22 about a person's status as a licensed producer



1 that induces a person or insurer to purchase an
2 insurance policy or reinsurance contract; and
3 (L) When making, or causing or permitting to be made,
4 any statement, either typed, written, or through
5 audio or video tape or electronic media, or
6 claims by the person or on behalf of a person
7 with regard to obtaining legal recovery or
8 benefits;
9 (2) Intentionally or knowingly aids, agrees, or attempts
10 to aid, solicit, or conspire with any person who
11 engages in an unlawful act as defined under this
12 section; or
13 (3) Intentionally or knowingly makes, causes, or permits
14 to be presented, any false statements or claims by any
15 person or on behalf of any person during an official
16 proceeding as defined by section 710-1000.
17 (b) Where the person acting with intent to defraud under
18 subsection (a) possessed actual knowledge or acted in deliberate
19 ignorance of the truth or falsity of the misrepresentation or
20 concealment of the material facts, opinions, intention, or law,
21 insurance fraud is:

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

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

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

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

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

16 **§431:2-D Restitution.** Where the ability to make
17 restitution can be demonstrated, any person convicted under this
18 part shall be ordered by a court to make restitution to any
19 insurer, person, or other licensee for any financial loss
20 sustained by that insurer, person, or licensee caused by the act
21 or acts for which the person was convicted.



1 **§431:2-E Insurance fraud; administrative penalties.** (a)

2 In addition to or in lieu of criminal penalties under section
3 431:2-C(b), any person who commits insurance fraud as defined
4 under section 431:2-C, may be subject to the administrative
5 penalties of this section.

6 (b) If a person is found to have knowingly committed
7 insurance fraud under title 24, the commissioner may assess any
8 or all of the following penalties:

9 (1) Restitution to any insurer or any other person of
10 benefits or payments fraudulently received or other
11 damages or costs incurred;

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

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

18 (c) Administrative actions brought for insurance fraud
19 under this part shall be brought within six years after the
20 insurance fraud is discovered or by exercise of reasonable
21 diligence should have been discovered and, in any event, no more



1 than ten years after the date on which a violation of this part
2 is committed.

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

5 (1) Acts in deliberate ignorance of the truth or falsity
6 of the facts; or

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

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

11 **§431:2-F Administrative procedures.** (a) An
12 administrative penalty may be imposed based upon a judgment by a
13 court of competent jurisdiction or upon an order by the
14 commissioner.

15 (b) The commissioner shall hold a hearing in accordance
16 with chapter 91, prior to imposition of any administrative
17 remedy.

18 **§431:2-G Acceptance of payment.** A provider's failure to
19 dispute a reduced payment by an insurer shall not constitute an
20 implied admission that a fraudulent billing had been submitted.

21 **§431:2-H Civil cause of action for insurance fraud;**
22 **exemption.** (a) An insurer or other licensee shall have a civil



1 cause of action to recover payments or benefits from any person
2 who has violated any practice prohibited by section 431:2-C of
3 this part. No recovery shall be allowed if the person has made
4 restitution under section 431:2-D or 431:2-E(b)(1).

5 (b) A person, insurer, or other licensee, including an
6 insurer's or other licensee's adjusters, bill reviewers,
7 producers, representatives, or common-law agents, if acting
8 without actual malice, shall not be subject to civil liability
9 for providing information, including filing a report, furnishing
10 oral, written, audiotaped, videotaped, or electronic media
11 evidence, providing documents, or giving testimony concerning
12 suspected, anticipated, or completed insurance fraud to:

- 13 (1) A court;
- 14 (2) The commissioner;
- 15 (3) The insurance fraud investigations branch;
- 16 (4) The National Association of Insurance Commissioners;
- 17 (5) The National Insurance Crime Bureau;
- 18 (6) Any federal, state, or county law enforcement or
19 regulatory agency; or
- 20 (7) Another insurer or other licensee;



1 if the information is provided for the purpose of preventing,
2 investigating, or prosecuting insurance fraud, except if the
3 person commits perjury.

4 (c) Civil actions brought for insurance fraud under this
5 part shall be brought within six years after the insurance fraud
6 is discovered or by exercise of reasonable diligence should have
7 been discovered and, in any event, no more than ten years after
8 the date on which a violation of this part is committed.

9 **§431:2-I Mandatory reporting.** (a) Within sixty days of
10 an insurer or other licensee's employee or agent discovering
11 credible information indicating that a violation of section
12 431:2-C is occurring or has occurred or as soon thereafter as
13 practicable, the insurer or licensee shall provide to the
14 insurance fraud investigations branch information, including
15 documents and other evidence, regarding the alleged violation of
16 section 431:2-C.

17 (b) Information provided pursuant to this section shall be
18 protected from public disclosure to the extent authorized by
19 chapter 92F and section 431:2-209; provided that the branch may
20 release the information in an administrative or judicial
21 proceeding to enforce this part, to federal, state, or local law
22 enforcement or regulatory authorities, the National Association



1 of Insurance Commissioners, the National Insurance Crime Bureau,
2 or an insurer or other licensee aggrieved by the alleged
3 violation of section 431:2-C.

4 **§431:2-J Deposit into the compliance resolution fund.** All
5 moneys that have been recovered by the department of commerce
6 and consumer affairs as a result of prosecuting insurance fraud
7 violations pursuant to this part, including civil fines,
8 criminal fines, administrative fines, and settlements, but not
9 including restitution made pursuant to section 431:2-D, 431:2-
10 E(b)(1), or 431:2-H, shall be deposited into the compliance
11 resolution fund established pursuant to section 26-9(o)."

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

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



1 (2) If the commissioner has cause to believe that any
 2 person has violated any penal provision of this code
 3 or of other laws relating to insurance, the
 4 commissioner may proceed against that person or shall
 5 certify the facts of the violation to the public
 6 prosecutor of the jurisdiction in which the offense
 7 was committed.

8 (3) Violation of any provision of this code is punishable
 9 by a fine of not less than \$100 nor more than \$10,000
 10 per violation, or by imprisonment for not more than
 11 one year, or both, in addition to any other penalty or
 12 forfeiture provided herein or otherwise by law.

13 (4) The terms "intentionally" and "knowingly" have the
 14 meanings given in section 702-206(1) and (2)."

15 SECTION 4. Section 431:2-204, Hawaii Revised Statutes, is
 16 amended by amending subsection (d) to read as follows:

17 "(d) When the commissioner, through the insurance fraud
 18 investigations [~~unit,~~] branch, is conducting an investigation of
 19 possible violations of [~~section 431:10C-307.7,~~] part , the
 20 commissioner shall pay to a financial institution that is served
 21 a subpoena issued under this section a fee for reimbursement of
 22 [~~such~~] the costs as are necessary and which have been directly



1 incurred in searching for, reproducing, or transporting books,
2 papers, documents, or other objects designated by the subpoena.
3 Reimbursement shall be paid at a rate not to exceed the rate set
4 forth in section 28-2.5(d)."

5 SECTION 5. Section 432:2-102, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

7 "(b) Nothing in this article shall exempt fraternal
8 benefit societies from the provisions and requirements of
9 part of article 2 of chapter 431 and section 431:2-215."

10 SECTION 6. Section 431:10A-131, Hawaii Revised Statutes,
11 is repealed.

12 [~~"[§431:10A-131] Insurance fraud, penalties. (a) A~~
13 ~~person commits the offense of insurance fraud if the person acts~~
14 ~~or omits to act with intent to obtain benefits or recovery or~~
15 ~~compensation for services provided, or provides legal assistance~~
16 ~~or counsel with intent to obtain benefits or recovery, through~~
17 ~~the following means:~~

18 ~~(1) Knowingly presenting, or causing or permitting to be~~
19 ~~presented, with the intent to defraud, any false~~
20 ~~information on a claim;~~

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

- 1 ~~(3) Knowingly presenting, or causing or permitting to be~~
2 ~~presented, multiple claims for the same loss or~~
3 ~~injury, including presenting multiple claims to more~~
4 ~~than one insurer, except when these multiple claims~~
5 ~~are appropriate;~~
- 6 ~~(4) Knowingly making, or causing or permitting to be made,~~
7 ~~any false claim for payment of a health care benefit;~~
- 8 ~~(5) Knowingly submitting, or causing or permitting to be~~
9 ~~submitted, a claim for a health care benefit that was~~
10 ~~not used by, or provided on behalf of, the claimant;~~
- 11 ~~(6) Knowingly presenting, or causing or permitting to be~~
12 ~~presented, multiple claims for payment of the same~~
13 ~~health care benefit except when these multiple claims~~
14 ~~are appropriate;~~
- 15 ~~(7) Knowingly presenting, or causing or permitting to be~~
16 ~~presented, for payment any undercharges for benefits~~
17 ~~on behalf of a specific claimant unless any known~~
18 ~~overcharges for benefits under this article for that~~
19 ~~claimant are presented for reconciliation at the same~~
20 ~~time;~~



1 ~~(8) Aiding, or agreeing or attempting to aid, soliciting,~~
2 ~~or conspiring with any person who engages in an~~
3 ~~unlawful act as defined under this section; or~~

4 ~~(9) Knowingly making, or causing or permitting to be made,~~
5 ~~any false statements or claims by, or on behalf of,~~
6 ~~any person or persons during an official proceeding as~~
7 ~~defined by section 710-1000.~~

8 ~~(b) Violation of subsection (a) is a criminal offense and~~
9 ~~shall constitute a:~~

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

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

16 ~~(3) Misdemeanor if the value of the benefits, recovery, or~~
17 ~~compensation obtained or attempted to be obtained is~~
18 ~~\$300 or less.~~

19 ~~(c) Where the ability to make restitution can be~~
20 ~~demonstrated, any person convicted under this section shall be~~
21 ~~ordered by a court to make restitution to an insurer or any~~
22 ~~other person for any financial loss sustained by the insurer or~~



1 ~~other person caused by the act or acts for which the person was~~
2 ~~convicted.~~

3 ~~(d) A person, if acting without malice, shall not be~~
4 ~~subject to civil liability for providing information, including~~
5 ~~filing a report, furnishing oral or written evidence, providing~~
6 ~~documents, or giving testimony concerning suspected,~~
7 ~~anticipated, or completed public or private insurance fraud to a~~
8 ~~court, the commissioner, the insurance fraud investigations~~
9 ~~unit, the National Association of Insurance Commissioners, any~~
10 ~~federal, state, or county law enforcement or regulatory agency,~~
11 ~~or another insurer if the information is provided only for the~~
12 ~~purpose of preventing, investigating, or prosecuting insurance~~
13 ~~fraud, except if the person commits perjury.~~

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

18 ~~(f) An insurer shall have a civil cause of action to~~
19 ~~recover payments or benefits from any person who has~~
20 ~~intentionally obtained payments or benefits in violation of this~~
21 ~~section; provided that no recovery shall be allowed if the~~
22 ~~person has made restitution under subsection (c)."]~~



1 SECTION 7. Section 431:10C-307.7, Hawaii Revised Statutes,
2 is repealed.

3 [~~"§431:10C-307.7 Insurance fraud, penalties. (a) A~~
4 ~~person commits the offense of insurance fraud if the person acts~~
5 ~~or omits to act with intent to obtain benefits or recovery or~~
6 ~~compensation for services provided, or provides legal assistance~~
7 ~~or counsel with intent to obtain benefits or recovery, through~~
8 ~~the following means:~~

9 ~~(1) Knowingly presenting, or causing or permitting to be~~
10 ~~presented, any false information on a claim;~~

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

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

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

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



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

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

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

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

18 ~~(b) Violation of subsection (a) is a criminal offense and~~
19 ~~shall constitute a:~~

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



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

4 ~~(3) Misdemeanor if the value of the benefits, recovery, or~~
5 ~~compensation obtained or attempted to be obtained is~~
6 ~~\$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~~
10 ~~other person for any financial loss sustained by the insurer or~~
11 ~~other person caused by the act or acts for which the person was~~
12 ~~convicted.~~

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

1 ~~prosecuting insurance fraud, except if the person commits~~
2 ~~perjury.~~

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

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

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



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

16 SECTION 8. Section 431:10C-307.8, Hawaii Revised Statutes,
17 is repealed.

18 ~~["**§431:10C-307.8 Insurance fraud investigations unit.** (a)~~
19 ~~There is established in the insurance division an insurance~~
20 ~~fraud investigations unit.~~

21 ~~(b) The unit shall employ attorneys, investigators,~~
22 ~~investigator assistants, and other support staff as necessary to~~



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

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

19 SECTION 9. Section 432:1-106, Hawaii Revised Statutes, is
20 repealed.

21 ["~~§432:1-106~~ **Insurance fraud; penalties.** (a) A person
22 ~~commits the offense of insurance fraud if the person acts or~~



1 ~~omits to act with intent to obtain benefits or recovery or~~
2 ~~compensation for services provided, or provides legal assistance~~
3 ~~or counsel with intent to obtain benefits or recovery, through~~
4 ~~the following means:~~

5 ~~(1) Knowingly presenting, or causing or permitting to be~~
6 ~~presented, with the intent to defraud, any false~~
7 ~~information on a claim;~~

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

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

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

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

20 ~~(6) Knowingly presenting, or causing or permitting to be~~
21 ~~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,~~
14 ~~any person or persons during an official proceeding as~~
15 ~~defined by section 710-1000.~~

16 ~~(b) 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 ~~or compensation obtained or attempted to be obtained~~
20 ~~is more than \$20,000;~~



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

4 ~~(3) Misdemeanor if the value of the benefits, recovery, or~~
5 ~~compensation obtained or attempted to be obtained is~~
6 ~~\$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~~
10 ~~other person for any financial loss sustained by the insurer or~~
11 ~~other person caused by the act or acts for which the person was~~
12 ~~convicted.~~

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



1 ~~purpose of preventing, investigating, or prosecuting insurance~~
2 ~~fraud, except if the person commits perjury.~~

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

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

12 SECTION 10. Section 432D-18.5, Hawaii Revised Statutes, is
13 repealed.

14 [~~["§432D-18.5] Insurance fraud; penalties.~~ (a) A person
15 ~~commits the offense of insurance fraud if the person acts or~~
16 ~~omits to act with intent to obtain benefits or recovery or~~
17 ~~compensation for services provided, or provides legal assistance~~
18 ~~or counsel with intent to obtain benefits or recovery, through~~
19 ~~the following means:~~

20 ~~(1) Knowingly presenting, or causing or permitting to be~~
21 ~~presented, with the intent to defraud, any false~~
22 ~~information on a claim;~~



- 1 ~~(2) Knowingly presenting, or causing or permitting to be~~
- 2 ~~presented, any false claim for the payment of a loss;~~
- 3 ~~(3) Knowingly presenting, or causing or permitting to be~~
- 4 ~~presented, multiple claims for the same loss or~~
- 5 ~~injury, including presenting multiple claims to more~~
- 6 ~~than one insurer, except when these multiple claims~~
- 7 ~~are appropriate;~~
- 8 ~~(4) Knowingly making, or causing or permitting to be made,~~
- 9 ~~any false claim for payment of a health care benefit;~~
- 10 ~~(5) Knowingly submitting, or causing or permitting to be~~
- 11 ~~submitted, a claim for a health care benefit that was~~
- 12 ~~not used by, or provided on behalf of, the claimant;~~
- 13 ~~(6) Knowingly presenting, or causing or permitting to be~~
- 14 ~~presented, multiple claims for payment of the same~~
- 15 ~~health care benefit except when these multiple claims~~
- 16 ~~are appropriate;~~
- 17 ~~(7) Knowingly presenting, or causing or permitting to be~~
- 18 ~~presented, for payment any undercharges for benefits~~
- 19 ~~on behalf of a specific claimant unless any known~~
- 20 ~~overcharges for benefits under this article for that~~
- 21 ~~claimant are presented for reconciliation at the same~~
- 22 ~~time;~~



- 1 ~~(8) Aiding, or agreeing or attempting to aid, soliciting,~~
2 ~~or conspiring with any person who engages in an~~
3 ~~unlawful act as defined under this section; or~~
- 4 ~~(9) Knowingly making, or causing or permitting to be made,~~
5 ~~any false statements or claims by, or on behalf of,~~
6 ~~any person or persons during an official proceeding as~~
7 ~~defined by section 710-1000.~~
- 8 ~~(b) Violation of subsection (a) is a criminal offense and~~
9 ~~shall constitute a:~~
- 10 ~~(1) Class B felony if the value of the benefits, recovery,~~
11 ~~or compensation obtained or attempted to be obtained~~
12 ~~is more than \$20,000;~~
- 13 ~~(2) Class C felony if the value of the benefits, recovery,~~
14 ~~or compensation obtained or attempted to be obtained~~
15 ~~is more than \$300; or~~
- 16 ~~(3) Misdemeanor if the value of the benefits, recovery, or~~
17 ~~compensation obtained or attempted to be obtained is~~
18 ~~\$300 or less.~~
- 19 ~~(c) Where the ability to make restitution can be~~
20 ~~demonstrated, any person convicted under this section shall be~~
21 ~~ordered by a court to make restitution to an insurer or any~~
22 ~~other person for any financial loss sustained by the insurer or~~



1 ~~other person caused by the act or acts for which the person was~~
2 ~~convicted.~~

3 ~~(d) A person, if acting without malice, shall not be~~
4 ~~subject to civil liability for providing information, including~~
5 ~~filing a report, furnishing oral or written evidence, providing~~
6 ~~documents, or giving testimony concerning suspected,~~
7 ~~anticipated, or completed public or private insurance fraud to a~~
8 ~~court, the commissioner, the insurance fraud investigations~~
9 ~~unit, the National Association of Insurance Commissioners, any~~
10 ~~federal, state, or county law enforcement or regulatory agency,~~
11 ~~or another insurer if the information is provided only for the~~
12 ~~purpose of preventing, investigating, or prosecuting insurance~~
13 ~~fraud, except if the person commits perjury.~~

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

18 ~~(f) An insurer shall have a civil cause of action to~~
19 ~~recover payments or benefits from any person who has~~
20 ~~intentionally obtained payments or benefits in violation of this~~
21 ~~section; provided that no recovery shall be allowed if the~~
22 ~~person has made restitution under subsection (c)."]~~



1 SECTION 11. All rights, powers, functions, and duties of
2 the insurance fraud investigations unit are transferred to the
3 insurance fraud investigations branch.

4 All officers and employees whose functions are transferred
5 by this Act shall be transferred with their functions and shall
6 continue to perform their regular duties upon their transfer,
7 subject to the state personnel laws and this Act.

8 No officer or employee of the State having tenure shall
9 suffer any loss of salary, seniority, prior service credit,
10 vacation, sick leave, or other employee benefit or privilege as
11 a consequence of this Act, and such officer or employee may be
12 transferred or appointed to a civil service position without the
13 necessity of examination; provided that the officer or employee
14 possesses the minimum qualifications for the position to which
15 transferred or appointed; and provided that subsequent changes
16 in status may be made pursuant to applicable civil service and
17 compensation laws.

18 An officer or employee of the State who does not have
19 tenure and who may be transferred or appointed to a civil
20 service position as a consequence of this Act shall become a
21 civil service employee without the loss of salary, seniority,
22 prior service credit, vacation, sick leave, or other employee



1 benefits or privileges and without the necessity of examination;
2 provided that such officer or employee possesses the minimum
3 qualifications for the position to which transferred or
4 appointed.

5 If an office or position held by an officer or employee
6 having tenure is abolished, the officer or employee shall not
7 thereby be separated from public employment, but shall remain in
8 the employment of the State with the same pay and classification
9 and shall be transferred to some other office or position for
10 which the officer or employee is eligible under the personnel
11 laws of the State as determined by the head of the department or
12 the governor.

13 SECTION 12. All appropriations, records, equipment,
14 machines, files, supplies, contracts, books, papers, documents,
15 maps, and other personal property heretofore made, used,
16 acquired, or held by the insurance fraud investigations unit
17 relating to the functions transferred to the insurance fraud
18 investigations branch shall be transferred with the functions to
19 which they relate.

20 SECTION 13. In codifying the new part added to chapter
21 431, Hawaii Revised Statutes, by section 2 of this Act, the
22 revisor of statutes shall substitute appropriate section numbers



1 for the letters used in designating the new sections in this
2 Act.

3 SECTION 14. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 15. This Act shall take effect on July 1, 2020.



Report Title:

Insurance Fraud

Description:

Expands the authority of the insurance division's insurance fraud investigations unit to prevent, investigate, and prosecute (both civilly and criminally) insurance fraud beyond motor vehicle insurance cases to all lines of insurance except workers' compensation. (HB1326 HD2)

