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# 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 is reported to cost 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 1997, was  
7 enacted to establish an insurance fraud investigations unit, and  
8 motor vehicle insurance fraud violations, and penalties. Act  
9 155, Session Laws of Hawaii 1998, was enacted the following year  
10 to clarify the penalties for the offense of motor vehicle  
11 insurance fraud and enhanced and clarified the powers and  
12 purpose of the insurance fraud investigations unit to combat  
13 motor vehicle insurance 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



1 equivalent to approximately \$36,000,000,000 to \$144,000,000,000  
2 annually. In Hawaii, based on the conservative estimate that  
3 insurance fraud amounts to three per cent of annual Hawaii  
4 healthcare costs, health insurance fraud causes losses that  
5 exceed \$60,000,000 annually. Realizing that insurance fraud is  
6 a growing problem in the area of health insurance, health  
7 insurance fraud provisions were enacted in Act 125, Session Laws  
8 of Hawaii 2003. None of the healthcare insurance fraud  
9 provisions clearly designates a specific law enforcement agency  
10 to be responsible for the investigation and prosecution of  
11 insurance fraud violations.

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

19 The purpose of this Act is to:

20 (1) Establish the insurance fraud investigations branch to  
21 replace the existing insurance fraud investigations



1 unit established in Act 251, which was expanded by  
2 Acts 155, and empower it to investigate and prosecute  
3 insurance fraud in all lines of insurance, except  
4 workers' compensation insurance;

5 (2) Establish administrative, civil, and criminal  
6 penalties for offenses of insurance fraud in all lines  
7 of insurance, except workers' compensation insurance,  
8 and for different types of insurance fraud, including  
9 fraudulent applications and sales; and

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

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

19 **"PART . INSURANCE FRAUD**

20 **§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" for the purpose of this part, means a  
4 contract issued by an insurer or 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, and a health maintenance organization governed  
10 by chapter 432D, and their respective agents and employees  
11 engaged in the business of the licensee, except for the business  
12 of providing workers' compensation insurance.

13 "Person" means any individual, company, association,  
14 organization, group, partnership, business, trust, or  
15 corporation; but shall exclude insurer, as defined in section  
16 431:1-202, and other licensees, as defined in this part.

17 **§431:2-B Insurance fraud investigations branch. (a)**

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

20 (b) The branch shall:



- 1 (1) Conduct a statewide program for the prevention of  
2 insurance fraud relating to, but not limited to, title  
3 24, except workers' compensation insurance;
- 4 (2) Notwithstanding any other law to the contrary,  
5 investigate and prosecute in administrative hearings  
6 and courts of competent jurisdiction all persons  
7 involved in insurance fraud violations arising out of  
8 but not limited to chapters 431, 432, and 432D; and
- 9 (3) Promote public and industry-wide education about  
10 insurance fraud.
- 11 (c) The branch may review and take appropriate action on  
12 complaints relating to insurance fraud.
- 13 (d) The commissioner shall employ or retain, by contract  
14 or otherwise, attorneys, investigators, investigator assistants,  
15 auditors, accountants, physicians, health care professionals,  
16 paralegals, consultants, experts, and other professional,  
17 technical, and support staff as necessary to promote the  
18 effective and efficient conduct of the branch's activities. The  
19 commissioner may hire such employees without regard to chapter  
20 76.



1 (e) Notwithstanding any other law to the contrary, an  
2 attorney employed or retained by the branch may represent the  
3 State in any criminal, civil, or administrative proceeding to  
4 enforce all applicable state laws relating to insurance fraud,  
5 including, but not limited to, criminal prosecutions,  
6 disciplinary actions, and actions for declaratory and injunctive  
7 relief. Each attorney representing the State in such a  
8 proceeding shall be designated by the attorney general as a  
9 special deputy attorney general. The decision to designate an  
10 attorney as a special deputy attorney general shall be solely  
11 within the discretion of the attorney general.

12 (f) Investigators, investigator assistants, and auditors  
13 appointed and commissioned under this part shall have and may  
14 exercise all of the powers and authority of a police officer or  
15 of a deputy sheriff.

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

19 **§431:2-C Insurance fraud.** (a) A person commits the  
20 offense of insurance fraud if the person intentionally or  
21 knowingly misrepresents or conceals material facts, opinions,



- 1 intention, or law in order to obtain or attempt to obtain  
2 coverage, benefits, recovery, or compensation for services by:
- 3 (1) Presenting, or causing or permitting to be presented,  
4 an application, whether written, typed, or transmitted  
5 through electronic media, for the issuance or renewal  
6 of an insurance policy or reinsurance contract;
  - 7 (2) Presenting, or causing or permitting to be presented,  
8 false information on a claim for payment whether  
9 typed, written, or transmitted through electronic  
10 media;
  - 11 (3) Presenting, or causing or permitting to be presented,  
12 a claim for the payment of a loss;
  - 13 (4) Presenting, or causing or permitting to be presented,  
14 improper multiple duplicative claims for the same loss  
15 or injury, including knowingly presenting the multiple  
16 and duplicative claims to more than one insurer;
  - 17 (5) Presenting, or causing or permitting to be presented,  
18 any claim for payment of a health care benefit;
  - 19 (6) Presenting, or causing or permitting to be presented,  
20 a claim for a health care benefit that was not used  
21 by, or provided on behalf of, the claimant;



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



- 1           (12) Making, or causing or permitting to be made, any  
2           statement, either typed, written, or through audio or  
3           video tape or electronic media, or claims by the  
4           person or on behalf of a person with regard to  
5           obtaining legal recovery or benefits; and
- 6           (13) Intentionally or knowingly aiding, agreeing, or  
7           attempting to aid, solicit, or conspire with any  
8           person who engages in an unlawful act as defined under  
9           this section; or
- 10          (14) Intentionally or knowingly making, causing, or  
11          permitting to be presented, any false statements or  
12          claims by any person or on behalf of any person during  
13          an official proceeding as defined by section 710-1000.
- 14          (b) Where the person acting with intent to defraud under  
15          section 431:2-C(a) possessed actual knowledge or acted in  
16          deliberate ignorance of the truth or falsity of the  
17          misrepresentation or concealment of the material facts,  
18          opinions, intention, or law, insurance fraud is a:
- 19            (1) Class B felony if the value of the benefits, recovery,  
20            or compensation obtained or attempted to be obtained  
21            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) This section shall not supersede any other law  
8 relating to theft, fraud, or deception. Insurance fraud may be  
9 prosecuted under this part, or any other applicable statute or  
10 common law, and all such remedies shall be cumulative.

11 (d) For the purpose of this section, "intentionally" and  
12 "knowingly" have the meanings as in section 702-206.

13 **§431:2-D Restitution.** Where the ability to make  
14 restitution can be demonstrated, any person convicted under this  
15 part shall be ordered by a court to make restitution to any  
16 insurer, person, or other licensee for any financial loss  
17 sustained by that insurer, person, or licensee caused by the act  
18 or acts for which the person was convicted.

19 **§431:2-E Insurance fraud; administrative penalties.** (a)  
20 In addition to or in lieu of criminal penalties under section  
21 431:2-C(b), any person who commits insurance fraud as defined



1 under section 431:2-C, may be subject to the administrative  
2 penalties of subsection (b).

3 (b) If a person is found to have knowingly committed  
4 insurance fraud under title 24, the commissioner may assess a  
5 penalty including any or all of the following:

6 (1) Restitution to any insurer or any other person of  
7 benefits or payments fraudulently received or other  
8 damages or costs incurred;

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

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

15 (c) Administrative actions brought for insurance fraud  
16 under this part shall be brought within six years after the  
17 insurance fraud is discovered or by exercise of reasonable  
18 diligence should have been discovered and, in any event, no more  
19 than ten years after the date on which a violation of this part  
20 is committed.



1 (d) For the purpose of this section, "knowingly" means  
2 that a person, has actual knowledge of the facts; and

3 (1) Acts in deliberate ignorance of the truth or falsity  
4 of the facts; or

5 (2) Acts in reckless disregard of the truth or falsity of  
6 the facts.

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

9 **§431:2-F Administrative procedures.** (a) An  
10 administrative penalty may be imposed based upon a judgment by a  
11 court of competent jurisdiction or upon an order by the  
12 commissioner.

13 (b) Prior to imposition of any administrative remedy the  
14 commissioner shall hold a hearing in accordance with chapter 91.

15 **§431:2-G Acceptance of payment.** A provider's failure to  
16 dispute a reduced payment by an insurer shall not constitute an  
17 implied admission that a fraudulent billing had been submitted.

18 **§431:2-H Civil cause of action for insurance fraud;**  
19 **exemption.** (a) An insurer or other licensee shall have a civil  
20 cause of action to recover payments or benefits from any person  
21 who has violated any practice prohibited by section 431:2-C of



1 this part. No recovery shall be allowed if the person has made  
2 restitution under section 431:2-D or 431:2-E(b)(1).

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

- 11 (1) A court;
- 12 (2) The commissioner;
- 13 (3) The insurance fraud investigations branch;
- 14 (4) The National Association of Insurance Commissioners;
- 15 (5) The National Insurance Crime Bureau;
- 16 (6) Any federal, state, or county law enforcement or  
17 regulatory agency; or
- 18 (7) Another insurer or other licensee, if the information  
19 is provided for the purpose of preventing,  
20 investigating, or prosecuting insurance fraud;
- 21 except if the person commits perjury.



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

6 **§431:2-I Mandatory reporting.** (a) Within sixty days of  
7 an insurer or other licensee's employee or agent discovering  
8 credible information indicating that a violation of section  
9 431:2-C is occurring or has occurred or as soon thereafter as  
10 practicable, the insurer or licensee shall provide to the  
11 insurance fraud investigations branch information, including  
12 documents and other evidence, regarding the alleged violation of  
13 section 431:2-C.

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



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

3       **§431:2-J Deposit into the compliance resolution fund.** All  
4 moneys that have been recovered by the department of commerce  
5 and consumer affairs as a result of prosecuting insurance fraud  
6 violations pursuant to this part, including civil fines,  
7 criminal fines, administrative fines, and settlements, but not  
8 including restitution made pursuant to sections 431:2-D,  
9 431:2-E(b)(1) or 431:2-H, shall be deposited into the compliance  
10 resolution fund established pursuant to section 26-9(o)."

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

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



1 ~~such~~ the costs as are necessary and which have been directly  
 2 incurred in searching for, reproducing, or transporting books,  
 3 papers, documents, or other objects designated by the subpoena.  
 4 Reimbursement shall be paid at a rate not to exceed the rate set  
 5 forth in section 28-2.5(d)."

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

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

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

13 [~~"{S431:10A-131} Insurance fraud; penalties. (a) A~~  
 14 ~~person commits the offense of insurance fraud if the person acts~~  
 15 ~~or omits to act with intent to obtain benefits or recovery or~~  
 16 ~~compensation for services provided, or provides legal assistance~~  
 17 ~~or counsel with intent to obtain benefits or recovery, through~~  
 18 ~~the following means:~~

19 ~~(1) Knowingly presenting, or causing or permitting to be~~  
 20 ~~presented, with the intent to defraud, any false~~  
 21 ~~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~~



1 ~~claimant are presented for reconciliation at the same~~  
2 ~~time;~~

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

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

10 ~~(b) Violation of subsection (a) is a criminal offense and~~  
11 ~~shall constitute a:~~

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

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

18 ~~(3) Misdemeanor if the value of the benefits, recovery, or~~  
19 ~~compensation obtained or attempted to be obtained is~~  
20 ~~\$300 or less.~~



1       ~~(c) Where the ability to make restitution can be~~  
2 ~~demonstrated, any person convicted under this section shall be~~  
3 ~~ordered by a court to make restitution to an insurer or any~~  
4 ~~other person for any financial loss sustained by the insurer or~~  
5 ~~other person caused by the act or acts for which the person was~~  
6 ~~convicted.~~

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

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



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

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

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

- 14       ~~(1) Knowingly presenting, or causing or permitting to be~~  
 15 ~~presented, any false information on a claim;~~
- 16       ~~(2) Knowingly presenting, or causing or permitting to be~~  
 17 ~~presented, any false claim for the payment of a loss;~~
- 18       ~~(3) Knowingly presenting, or causing or permitting to be~~  
 19 ~~presented, multiple claims for the same loss or~~  
 20 ~~injury, including presenting multiple claims to more~~



1           ~~than one insurer, except when these multiple claims~~  
2           ~~are appropriate;~~

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

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

8           ~~(6) Knowingly presenting, or causing or permitting to be~~  
9           ~~presented, multiple claims for payment of the same~~  
10           ~~health care benefit except when these multiple claims~~  
11           ~~are appropriate;~~

12           ~~(7) Knowingly presenting, or causing or permitting to be~~  
13           ~~presented, for payment any undercharges for benefits~~  
14           ~~on behalf of a specific claimant unless any known~~  
15           ~~overcharges for benefits under this article for that~~  
16           ~~claimant are presented for reconciliation at the same~~  
17           ~~time;~~

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



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

5       ~~(b) Violation of subsection (a) is a criminal offense and~~  
6       ~~shall constitute a:~~

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

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

13       ~~(3) Misdemeanor if the value of the benefits, recovery, or~~  
14       ~~compensation obtained or attempted to be obtained is~~  
15       ~~\$300 or less.~~

16       ~~(c) Where the ability to make restitution can be~~  
17       ~~demonstrated, any person convicted under this section shall be~~  
18       ~~ordered by a court to make restitution to an insurer or any~~  
19       ~~other person for any financial loss sustained by the insurer or~~  
20       ~~other person caused by the act or acts for which the person was~~  
21       ~~convicted.~~



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

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

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



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

12       ~~(h) An insurer, or the insurer's employee or agent, having~~  
13 ~~determined that there is reason to believe that a claim is being~~  
14 ~~made in violation of this section, shall provide to the~~  
15 ~~insurance fraud investigations unit within sixty days of that~~  
16 ~~determination, information, including documents and other~~  
17 ~~evidence, regarding the claim in the form and manner prescribed~~  
18 ~~by the unit. Information provided pursuant to this subsection~~  
19 ~~shall be protected from public disclosure to the extent~~  
20 ~~authorized by chapter 92F and section 431:2-209; provided that~~  
21 ~~the unit may release the information in an administrative or~~



1 ~~judicial proceeding to enforce this section, to a federal,~~  
2 ~~state, or local law enforcement or regulatory authority, to the~~  
3 ~~National Association of Insurance Commissioners, or to an~~  
4 ~~insurer aggrieved by the claim reasonably believed to violate~~  
5 ~~this section." ]~~

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

8 [~~"§431:10C-307.8 Insurance fraud investigations unit. (a)~~  
9 ~~There is established in the insurance division an insurance~~  
10 ~~fraud investigations unit.~~

11 ~~(b) The unit shall employ attorneys, investigators,~~  
12 ~~investigator assistants, and other support staff as necessary to~~  
13 ~~promote the effective and efficient conduct of the unit's~~  
14 ~~activities. Notwithstanding any other law to the contrary, the~~  
15 ~~attorneys may represent the State in any judicial or~~  
16 ~~administrative proceeding to enforce all applicable state laws~~  
17 ~~relating to insurance fraud, including but not limited to~~  
18 ~~criminal prosecutions and actions for declaratory and injunctive~~  
19 ~~relief. Investigators may serve process and apply for and~~  
20 ~~execute search warrants pursuant to chapter 803 and the rules of~~  
21 ~~court but shall not otherwise have the powers of a police~~



1 ~~officer or deputy sheriff. The commissioner may hire such~~  
2 ~~employees not subject to chapter 76.~~

3 ~~(c) The purpose of the insurance fraud investigations unit~~  
4 ~~shall be to conduct a statewide program for the prevention,~~  
5 ~~investigation, and prosecution of insurance fraud cases and~~  
6 ~~violations of all applicable state laws relating to insurance~~  
7 ~~fraud. The insurance fraud investigations unit may also review~~  
8 ~~and take appropriate action on complaints relating to insurance~~  
9 ~~fraud." ]~~

10 SECTION 9. Section 432:1-106, Hawaii Revised Statutes, is  
11 repealed.

12 ~~["**[S432:1-106] Insurance fraud; penalties.** (a) A person~~  
13 ~~commits the offense of insurance fraud if the person acts or~~  
14 ~~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;~~



- 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~~



1 ~~claimant are presented for reconciliation at the same~~  
2 ~~time;~~

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

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

10 ~~(b) Violation of subsection (a) is a criminal offense and~~  
11 ~~shall constitute a:~~

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

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

18 ~~(3) Misdemeanor if the value of the benefits, recovery, or~~  
19 ~~compensation obtained or attempted to be obtained is~~  
20 ~~\$300 or less.~~



1       ~~(c) Where the ability to make restitution can be~~  
2 ~~demonstrated, any person convicted under this section shall be~~  
3 ~~ordered by a court to make restitution to an insurer or any~~  
4 ~~other person for any financial loss sustained by the insurer or~~  
5 ~~other person caused by the act or acts for which the person was~~  
6 ~~convicted.~~

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

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



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

6 SECTION 10. Section 432D-18.5, Hawaii Revised Statutes, is  
 7 repealed.

8 ~~["**[§432D-18.5] Insurance fraud; penalties.** (a) A person~~  
 9 ~~commits the offense of insurance fraud if the person acts or~~  
 10 ~~omits to act with intent to obtain benefits or recovery or~~  
 11 ~~compensation for services provided, or provides legal assistance~~  
 12 ~~or counsel with intent to obtain benefits or recovery, through~~  
 13 ~~the following means:~~

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

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

19 ~~(3) Knowingly presenting, or causing or permitting to be~~  
 20 ~~presented, multiple claims for the same loss or~~  
 21 ~~injury, including presenting multiple claims to more~~



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



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

5       ~~(b) Violation of subsection (a) is a criminal offense and~~  
6       ~~shall constitute a:~~

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

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

13       ~~(3) Misdemeanor if the value of the benefits, recovery, or~~  
14       ~~compensation obtained or attempted to be obtained is~~  
15       ~~\$300 or less.~~

16       ~~(c) Where the ability to make restitution can be~~  
17       ~~demonstrated, any person convicted under this section shall be~~  
18       ~~ordered by a court to make restitution to an insurer or any~~  
19       ~~other person for any financial loss sustained by the insurer or~~  
20       ~~other person caused by the act or acts for which the person was~~  
21       ~~convicted.~~



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

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

16       ~~(f) An insurer shall have a civil cause of action to~~  
17 ~~recover payments or benefits from any person who has~~  
18 ~~intentionally obtained payments or benefits in violation of this~~  
19 ~~section; provided that no recovery shall be allowed if the~~  
20 ~~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,



1 prior service credit, vacation, sick leave, or other employee  
2 benefits or privileges and without the necessity of examination;  
3 provided that such officer or employee possesses the minimum  
4 qualifications for the position to which transferred or  
5 appointed.

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

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



1 SECTION 13. In codifying the new sections added by section  
2 2 of this Act, the revisor of statutes shall substitute  
3 appropriate section numbers for the letters used in designating  
4 the new sections in this Act.

5 SECTION 14. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 15. This Act shall take effect on July 1, 2007.



**REPORT Title:**

Insurance Fraud

**Description:**

Establishes the insurance fraud investigations branch to replace the existing insurance fraud investigations unit to prevent, investigate, and prosecute (both civilly and criminally) insurance fraud relating to all lines of insurance, except workers' compensation insurance. (SD2)

