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## A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

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

1           SECTION 1. Section 386-98, Hawaii Revised Statutes, is  
2 amended by amending subsection (e) to read as follows:

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

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

11           (2) Suspension or termination of benefits in whole or in  
12 part;

13           (3) Suspension or disqualification from providing medical  
14 care or services, vocational rehabilitation services,  
15 and all other services rendered for payment under this  
16 chapter;



1 (4) Suspension or termination of payments for medical,  
2 vocational rehabilitation, and all other services  
3 rendered under this chapter;

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

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

10 In cases where any party successfully investigates and a  
11 determination is made that fraud has occurred under this  
12 chapter, the successful party shall be entitled to the  
13 administrative penalties specified under paragraphs (5) and (6).  
14 Where a person is charged with fraud under this subsection and a  
15 determination is made that fraud has not occurred, the person  
16 charged shall be entitled to reimbursement of attorney's fees  
17 and costs payable by the person or persons who initiated the  
18 charge and prosecuted the action. When the charges filed are  
19 criminal in nature, a person shall not be entitled to attorney's  
20 fees and costs. Moreover, no person subject to administrative



1 penalties in an action under this subsection shall be subject to  
2 double jeopardy under any other subsection."

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

5 "(a) The commissioner may investigate a complaint and  
6 prosecute an action in any court of competent jurisdiction to  
7 enforce chapter 386 as it pertains solely to workers  
8 compensation fraud, and any order or fine made by the  
9 commissioner pursuant to any provision of this code[-],  
10 including workers' compensation fraud; provided that for an  
11 investigation or prosecution related to workers' compensation  
12 fraud, the commissioner shall only investigate or prosecute  
13 workers' compensation fraud complaints brought against an  
14 insurance carrier, a self-insured employer, or a fully insured  
15 employer."

16 SECTION 3. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 4. This Act shall take effect upon its approval  
19 and shall be repealed on June 30, 2009; provided that sections  
20 386-98(e) and 431:2-203(a), Hawaii Revised Statutes, shall be



# H.B. NO. 305

1 reenacted in the form in which they read on the day before the  
2 approval of this Act.

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INTRODUCED BY:

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JAN 18 2007



**Report Title:**

Workers' Compensation

**Description:**

Authorizes recovery of attorney's fees and costs under workers' compensation law by any person who successfully defends any charge of workers' compensation insurance fraud, except criminal cases, against the person who initiates and prosecutes the action. Authorizes the insurance commissioner to investigate complaints and prosecute cases of workers' compensation fraud, provided that the complaint is against an insurance carrier, a self-insured employer, or a full-insured employer.

