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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. The legislature recognizes that insurance fraud  
2 is a significant problem in Hawaii. The legislature finds that  
3 to combat insurance fraud, not only is it necessary to deter  
4 persons from committing insurance fraud by imposing substantial  
5 fines, but it is also important to provide additional personnel  
6 and resources to facilitate the prosecution of insurance fraud.

7           In addition, the jurisdiction of the insurance fraud  
8 investigations unit of the department of commerce and consumer  
9 affairs is currently limited to investigating and prosecuting  
10 motor vehicle insurance matters only. The legislature finds  
11 that the unit's jurisdiction should also be expanded to allow  
12 the unit to address insurance fraud in workers' compensation.

13           The purpose of this Act is to improve the ability of the  
14 insurance fraud investigations unit of the department of  
15 commerce and consumer affairs to deter insurance fraud by:

16           (1) Expanding the unit's jurisdiction to include insurance  
17 fraud in workers' compensation cases; and



1 (2) Appropriating funds for additional personnel and  
2 resources within the unit to combat insurance fraud.

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

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

10 (b) The purpose of the insurance fraud investigations unit  
11 shall be to conduct a statewide program for the prevention,  
12 investigation, and prosecution of insurance fraud cases and  
13 violations relating to insurance fraud arising from article 10C  
14 of this chapter and chapter 386. The insurance fraud  
15 investigations unit may also review and take appropriate  
16 disciplinary and administrative action on complaints relating to  
17 insurance fraud arising from article 10C of this chapter and  
18 chapter 386.

19 (c) The unit shall employ or retain, by contract or  
20 otherwise, attorneys, investigators, investigator assistants, and  
21 other support staff as necessary to promote the effective and



1 efficient conduct of the unit's activities. Notwithstanding any  
2 other law to the contrary, the attorneys may represent the State  
3 in any judicial or administrative proceeding to enforce all  
4 applicable state laws relating to insurance fraud, including but  
5 not limited to criminal prosecutions, administrative actions,  
6 disciplinary actions, 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 officer  
10 or deputy sheriff. The commissioner may hire such employees, who  
11 shall not be subject to chapter 76.

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

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



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

- 8        (1) Knowingly presenting, or causing or permitting to be  
9        presented, any false information on a claim;
- 10       (2) Knowingly presenting, or causing or permitting to be  
11       presented, any false claim for the payment of a loss;
- 12       (3) Knowingly presenting, or causing or permitting to be  
13       presented, multiple claims for the same loss or  
14       injury, including presenting multiple claims to more  
15       than one insurer, except when these multiple claims  
16       are appropriate;
- 17       (4) Knowingly making, or causing or permitting to be made,  
18       any false claim for payment of a health care benefit;
- 19       (5) Knowingly submitting, or causing or permitting to be  
20       submitted, a claim for a health care benefit that was  
21       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;
- 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; or
- 18       (10) Knowingly making, or causing or permitting to be made,  
19       any false statement regarding payroll, nature of the  
20       work performed, ownership, previous payroll premium or  
21       claim history, or concealing or omitting such



1 information when applying for or renewing insurance  
2 coverage or upon audit of records for premium  
3 determination purposes.

4 (b) A violation of subsection (a) is a criminal offense  
5 and shall constitute:

6 (1) A class B felony if the value of the benefits,  
7 recovery, claim, compensation, or premium reduction  
8 obtained or attempted to be obtained is more than  
9 \$20,000;

10 (2) A class C felony if the value of the benefits,  
11 recovery, claim, compensation, or premium reduction  
12 obtained or attempted to be obtained is more than  
13 \$300; or

14 (3) A misdemeanor if the value of the benefits, recovery,  
15 claim, compensation, or premium reduction obtained or  
16 attempted to be obtained is \$300 or less.

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



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 law, and  
15 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 loss or  
8 benefit is a crime punishable by a fine, 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 a claim reasonably believed to violate this  
5 section.

6 (i) For the purposes of this section, "person" does not  
7 include an employee."

8 SECTION 3. Section 386-98, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 **"§386-98 Fraud violations and penalties. (a) A**  
11 ~~[fraudulent insurance act, under this chapter, shall include~~  
12 ~~acts or omissions committed by any person who intentionally or~~  
13 ~~knowingly]~~ person commits the offense of insurance fraud if the  
14 person acts or omits to act [se-as] with intent to obtain  
15 benefits, deny benefits, obtain benefits compensation for  
16 services provided, or a reduction in premiums, or provides legal  
17 assistance or counsel to obtain benefits [or recovery through  
18 ~~fraud or deceit by doing the following-], deny benefits, obtain~~  
19 benefits compensation, or a reduction in premiums through the  
20 following means:



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



- 1           (6)   ~~[Presenting]~~ Knowingly presenting, or causing or  
2                   permitting to be presented, multiple claims for  
3                   payment of the same health care benefit[+], except  
4                   when these multiple claims are appropriate;
- 5           (7)   ~~[Presenting]~~ Knowingly presenting, or causing or  
6                   permitting to be presented for payment, any  
7                   undercharges for health care benefits on behalf of a  
8                   specific claimant, unless any known overcharges for  
9                   health care benefits for that claimant are presented  
10                  for reconciliation at ~~[that]~~ the same time;
- 11           (8)   Misrepresenting or concealing a material fact;
- 12           (9)   Fabricating, altering, concealing, making a false  
13                  entry in, or destroying a document;
- 14           (10) ~~[Making,]~~ Knowingly making, or causing or permitting  
15                  to be made, any false ~~[or fraudulent]~~ statements with  
16                  regard to entitlements or benefits, with the intent to  
17                  discourage an injured employee from claiming benefits  
18                  or pursuing a workers' compensation claim; or
- 19           (11) ~~[Making,]~~ Knowingly making, or causing to be made, any  
20                  false ~~[or fraudulent]~~ statements or claims by, or on



1           behalf of, a client with regard to obtaining legal  
2           recovery or benefits.

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

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

12           (1) The state bar if attorneys are in violation;

13           (2) The insurance commissioner if insurance company  
14 personnel are in violation; or

15           (3) The regulated industries complaints office if health  
16 care providers are in violation,

17 for investigation and, if appropriate, disciplinary action.

18           (d) An offense under subsections (a) and (b) shall  
19 constitute [a]:

20           (1) [~~Class~~] A class C felony if the value of the moneys  
21 obtained or denied is not less than \$2,000;



1           (2) [~~Misdemeanor~~] A misdemeanor if the value of the moneys  
2           obtained or denied is less than \$2,000; or

3           (3) [~~Petty~~] A petty misdemeanor if the providing of false  
4           information did not cause any monetary loss.

5 Any person subject to a criminal penalty under this section  
6 shall be ordered by a court to make restitution to an insurer or  
7 any other person for any financial loss, including a premium  
8 reduction, sustained by the insurer or other person caused by  
9 the fraudulent act.

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

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

18           (2) Suspension or termination of benefits in whole or in  
19           part;

20           (3) Suspension or disqualification from providing medical  
21           care or services, vocational rehabilitation services,



1           and all other services rendered for payment under this  
2           chapter;

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

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

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

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



1 the person charged. Any person aggrieved by the decision may  
2 appeal the decision under sections 386-87 and 386-88.

3 (g) The insurance fraud investigations unit of the  
4 insurance division of the department of commerce and consumer  
5 affairs, established pursuant to section 431:2-A, may initiate  
6 investigations, prosecutions, and disciplinary and  
7 administrative actions to enforce this section, including but  
8 not limited to workers' compensation fraud relating to self-  
9 insured employers."

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

12 [~~§431:10C-307.7 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, any false information on a claim;~~

20 (2) ~~Knowingly presenting, or causing or permitting to be~~  
21 ~~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 other~~



1 ~~person for any financial loss sustained by the insurer or other~~  
2 ~~person caused by the act or acts for which the person was~~  
3 ~~convicted.~~

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

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

19 ~~(f) An insurer shall have a civil cause of action to~~  
20 ~~recover payments or benefits from any person who has~~  
21 ~~intentionally obtained payments or benefits in violation of this~~



1 ~~section; provided that no recovery shall be allowed if the person~~  
2 ~~has made restitution under subsection (c).~~

3 ~~(g) All applications for insurance under this article and~~  
4 ~~all claim forms provided and required by an insurer, regardless~~  
5 ~~of the means of transmission, shall contain, or have attached to~~  
6 ~~them, the following or a substantially similar statement, in a~~  
7 ~~prominent location and typeface as determined by the insurer:—~~

8 ~~"For your protection, Hawaii law requires you to be informed that~~  
9 ~~presenting a fraudulent claim for payment of a loss or benefit is~~  
10 ~~a crime punishable by fines or imprisonment, or both."—The~~  
11 ~~absence of such a warning in any application or claim form shall~~  
12 ~~not constitute a defense to a charge of insurance fraud under~~  
13 ~~this section.~~

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



1 ~~authorized by chapter 92F and section 431:2-209, provided that~~  
2 ~~the unit may release the information in an administrative or~~  
3 ~~judicial proceeding to enforce this section, to a federal, state,~~  
4 ~~or local law enforcement or regulatory authority, to the National~~  
5 ~~Association of Insurance Commissioners, or to an insurer~~  
6 ~~aggrieved by the claim reasonably believed to violate this~~  
7 ~~section." ]~~

8 SECTION 5. Section 431:10C-307.8, Hawaii Revised Statutes,  
9 is repealed.

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

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



1 ~~execute search warrants pursuant to chapter 803 and the rules of~~  
2 ~~court but shall not otherwise have the powers of a police officer~~  
3 ~~or deputy sheriff. The commissioner may hire such employees not~~  
4 ~~subject to chapter 76.~~

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

12 SECTION 6. There is appropriated out of the compliance  
13 resolution fund of the State of Hawaii the sum of \$ or  
14 so much thereof as may be necessary for fiscal year 2007-2008  
15 and the same sum or so much thereof as may be necessary for  
16 fiscal year 2008-2009 to provide additional personnel and  
17 resources for the insurance fraud investigations unit of the  
18 insurance division of the department of commerce and consumer  
19 affairs to prosecute insurance fraud.

20 The sums appropriated shall be expended by the department  
21 of commerce and consumer affairs for the purposes of this Act.



1           SECTION 7. 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 8. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7           SECTION 9. This Act shall take effect on July 1, 2020.



**REPORT Title:**

Insurance Fraud Investigations Unit

**Description:**

Expands the Department of Commerce and Consumer Affairs' jurisdiction over insurance fraud to include workers' compensation cases, until July 1, 2010. Appropriates funds for additional personnel and resources within the department to combat insurance fraud. (SB1412 HD2)

