

STAND. COM. REP. NO.

891

Honolulu, Hawaii

March 6, 2009

RE: H.B. No. 262

H.D. 2

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committee on Finance, to which was referred H.B. No. 262, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO INSURANCE FRAUD,"

begs leave to report as follows:

The purpose of this bill is to expand the authority of the Insurance Division's Insurance Fraud Investigations Unit, renamed the Insurance Fraud Investigation Branch, to prevent, investigate, and prosecute, both civilly and criminally, insurance fraud beyond motor vehicle insurance cases, to all lines of insurance except workers' compensation.

The Department of Commerce and Consumer Affairs, Hawaii Medical Service Association, National Association of Insurance and Financial Advisors Hawaii, Hawaii Association of Health Plans, American Council of Life Insurers, and State Farm Insurance Companies testified in support of this bill. The Department of the Attorney General offered comments.

Your Committee has amended this bill by:

- (1) Changing its effective date to July 1, 2020, to encourage further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

HB262 HD2 HSCR FIN HMS 2009-2671



As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 262, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 262, H.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Finance,


MARCUS R. OSHIRO, Chair



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 finds that insurance fraud
2 reportedly costs every household in the United States an average
3 of \$500 per year. In Hawaii, the cost of motor vehicle
4 insurance fraud alone has been estimated to be over \$164
5 annually per household. In recognition of the impact that fraud
6 has on the cost of motor vehicle insurance, Act 251, Session
7 Laws of Hawaii 1997, was enacted to establish an insurance fraud
8 investigations unit and motor vehicle insurance fraud violations
9 and penalties. Act 155, Session Laws of Hawaii 1998, was
10 enacted the following year to clarify the penalties for the
11 offense of motor vehicle insurance fraud and enhanced and
12 clarified the powers and purpose of the insurance fraud
13 investigations unit to combat motor vehicle insurance fraud.

14 Insurance fraud also has increasingly affected costs within
15 the health insurance industry. Industry health care fraud
16 losses are estimated at three to fourteen per cent of the
17 \$1,200,000,000,000 in annual national health care costs. This
18 is equivalent to approximately \$36,000,000,000 to



1 \$168,000,000,000 annually. In Hawaii, based on the conservative
2 estimate that insurance fraud amounts to three per cent of
3 annual Hawaii health care costs, health insurance fraud causes
4 losses that exceed \$60,000,000 annually. Realizing that
5 insurance fraud is a growing problem in the area of health
6 insurance, the legislature passed health insurance fraud
7 provisions through Act 125, Session Laws of Hawaii 2003.
8 However, none of the health care insurance fraud provisions of
9 Act 125 clearly assign to a specific law enforcement agency the
10 responsibility of investigating and prosecuting insurance fraud
11 violations.

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

20 The purpose of this Act is to:

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



1 unit established in Act 251, Session Laws of Hawaii
2 1997, which was expanded by Act 155, Session Laws of
3 Hawaii 1998, and empower the branch to investigate and
4 prosecute insurance fraud in all lines of insurance
5 except cases and violations related to workers
6 compensation arising from chapter 386, Hawaii Revised
7 Statutes;

8 (2) Impose administrative, civil, and criminal penalties
9 for offenses of insurance fraud in all lines of
10 insurance and for different types of insurance fraud,
11 including fraudulent applications and sales; and

12 (3) Direct fines and settlements resulting from successful
13 insurance fraud prosecutions for deposit into the
14 compliance resolution fund to help the insurance fraud
15 investigations branch cover some of the cost of its
16 own operation to prevent, investigate, and prosecute
17 insurance fraud.

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

21 **"PART . INSURANCE FRAUD**

22 **§431:2-A Definitions.** As used in this part:



1 "Branch" means the insurance fraud investigations branch of
2 the insurance division of the department of commerce and
3 consumer affairs.

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

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

13 "Person" means any individual, company, association,
14 organization, group, partnership, business, trust, or
15 corporation; but shall exclude insurers, 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 for the purposes set forth in this
20 part.

21 (b) The branch shall:



1 (1) Conduct a statewide program for the prevention of
2 insurance fraud under title 24, including chapters
3 431, 432, and 432D, but excluding workers'
4 compensation under chapter 386;

5 (2) Notwithstanding any other law to the contrary,
6 investigate and prosecute in administrative hearings
7 and courts of competent jurisdiction all persons
8 involved in insurance fraud violations; 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 those employees without regard to chapters
20 76 or 89.

21 (e) Notwithstanding any other law to the contrary, an
22 attorney employed or retained by the branch may represent the



1 State in any criminal, civil, or administrative proceeding to
2 enforce all applicable state laws relating to insurance fraud,
3 including but not limited to criminal prosecutions, disciplinary
4 actions, and actions for declaratory and injunctive relief. The
5 attorney general may designate an attorney as a special deputy
6 attorney general for purposes of this subsection.

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

10 (g) Funding for the branch shall come from the compliance
11 resolution fund established pursuant to section 26-9(o).

12 **§431:2-C Insurance fraud.** (a) A person commits the
13 offense of insurance fraud if the person:

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

19 (A) When presenting, or causing or permitting to be
20 presented, an application, whether written,
21 typed, or transmitted through electronic media,



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



1 claims for payment of the same health care
2 benefit;

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

9 (I) When fabricating, altering, concealing, making an
10 entry in, or destroying a document whether typed,
11 written, or through an audio or video tape or
12 electronic media;

13 (J) When presenting, or causing or permitting to be
14 presented, to a person, insurer, or other
15 licensee false, incomplete, or misleading
16 information to obtain coverage or payment
17 otherwise available under an insurance policy;

18 (K) When presenting, or causing or permitting to be
19 presented, to a person or producer, information
20 about a person's status as a licensed producer
21 that induces a person or insurer to purchase an
22 insurance policy or reinsurance contract; and



1 (L) When making, or causing or permitting to be made,
2 any statement, either typed, written, or through
3 audio or video tape or electronic media, or
4 claims by the person or on behalf of a person
5 with regard to obtaining legal recovery or
6 benefits;

7 (2) Intentionally or knowingly aids, agrees, or attempts
8 to aid, solicit, or conspire with any person who
9 engages in an unlawful act as defined under this
10 section; or

11 (3) Intentionally or knowingly makes, causes, or permits
12 to be presented, any false statements or claims by any
13 person or on behalf of any person during an official
14 proceeding as defined by section 710-1000.

15 (b) Where the person acting with intent to defraud under
16 subsection (a) possessed actual knowledge or acted in deliberate
17 ignorance of the truth or falsity of the misrepresentation or
18 concealment of the material facts, opinions, intention, or law,
19 insurance fraud is:

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



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

4 (3) A misdemeanor if the value of the benefits, recovery,
5 or compensation obtained or attempted to be obtained
6 is \$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" shall have the same meanings as defined in section
13 702-206.

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

20 **§431:2-E Insurance fraud; administrative penalties.** (a)
21 In addition to or in lieu of criminal penalties under section
22 431:2-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 this section.

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

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 attorneys' 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.

21 (d) For the purpose of subsection (b), "knowingly" shall
22 have the same meaning as defined in section 702-206.



1 **§431:2-F Administrative procedures.** (a) An
2 administrative penalty may be imposed based upon a judgment by a
3 court of competent jurisdiction or upon an order by the
4 commissioner.

5 (b) The commissioner shall hold a hearing in accordance
6 with chapter 91, prior to imposition of any administrative
7 remedy.

8 **§431:2-G Acceptance of payment.** A provider's failure to
9 dispute a reduced payment by an insurer shall not constitute an
10 implied admission that a fraudulent billing had been submitted.

11 **§431:2-H Civil cause of action for insurance fraud;
12 exemption.** (a) An insurer or other licensee shall have a civil
13 cause of action to recover payments or benefits from any person
14 who has violated any practice prohibited by section 431:2-C. No
15 recovery shall be allowed if the person has made restitution
16 under section 431:2-D or 431:2-E(b)(1).

17 (b) A person, insurer, or other licensee, including an
18 insurer's or other licensee's adjusters, bill reviewers,
19 producers, representatives, or common-law agents, if acting
20 without actual malice, shall not be subject to civil liability
21 for providing information, including filing a report, furnishing
22 oral, written, audiotaped, videotaped, or electronic media



1 evidence, providing documents, or giving testimony concerning
2 suspected, anticipated, or completed insurance fraud to:

- 3 (1) A court;
- 4 (2) The commissioner;
- 5 (3) The branch;
- 6 (4) The National Association of Insurance Commissioners;
- 7 (5) The National Insurance Crime Bureau;
- 8 (6) Any federal, state, or county law enforcement or
9 regulatory agency; or
- 10 (7) Another insurer or other licensee,

11 if the information is provided for the purpose of preventing,
12 investigating, or prosecuting insurance fraud, except if the
13 person commits perjury.

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

19 **§431:2-I Mandatory reporting.** (a) Within sixty days of
20 an insurer or other licensee's employee or agent discovering
21 credible information indicating that a violation of section
22 431:2-C is occurring or has occurred or as soon thereafter as



1 practicable, the insurer or licensee shall provide to the branch
2 information, including documents and other evidence, regarding
3 the alleged violation of section 431:2-C.

4 (b) Information provided pursuant to this section shall be
5 protected from public disclosure to the extent authorized by
6 chapter 92F and section 431:2-209; provided that the branch may
7 release the information in an administrative or judicial
8 proceeding to enforce this part to federal, state, or local law
9 enforcement or regulatory authorities, the National Association
10 of Insurance Commissioners, the National Insurance Crime Bureau,
11 or an insurer or other licensee aggrieved by the alleged
12 violation of section 431:2-C.

13 **§431:2-J Deposit into the compliance resolution fund.** All
14 moneys that have been recovered by the department of commerce
15 and consumer affairs as a result of prosecuting insurance fraud
16 violations pursuant to this part, including civil fines,
17 criminal fines, administrative fines, and settlements, but not
18 including restitution made pursuant to section 431:2-D, 431:2-
19 E(b)(1), or 431:2-H, shall be deposited into the compliance
20 resolution fund established pursuant to section 26-9(o)."

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



- 1 "(b) (1) A person who intentionally or knowingly violates,
2 intentionally or knowingly permits any person over
3 whom the person has authority to violate, or
4 intentionally or knowingly aids any person in
5 violating any insurance rule or statute of this State
6 or any effective order issued by the commissioner,
7 shall be subject to any penalty or fine as [~~stated in~~]
8 provided by this code or the penal code of the Hawaii
9 Revised Statutes.
- 10 (2) If the commissioner has cause to believe that any
11 person has violated any penal provision of this code
12 or of other laws relating to insurance, the
13 commissioner may proceed against that person or shall
14 certify the facts of the violation to the public
15 prosecutor of the jurisdiction in which the offense
16 was committed.
- 17 (3) Violation of any provision of this code is punishable
18 by a fine of not less than \$100 nor more than \$10,000
19 per violation, or by imprisonment for not more than
20 one year, or both, in addition to any other penalty or
21 forfeiture provided herein or otherwise by law.



1 (4) The terms "intentionally" and "knowingly" shall have
2 the same meanings [~~given~~] as defined in section 702-
3 206(1) and (2)."

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

6 "(d) When the commissioner, through the insurance fraud
7 investigations [~~unit,~~] branch, is conducting an investigation of
8 possible violations of [~~section 431:10C-307.7,~~] part of
9 article 2, the commissioner shall pay to a financial institution
10 that is served a subpoena issued under this section a fee for
11 reimbursement of [~~such~~] the costs as are necessary and which
12 have been directly incurred in searching for, reproducing, or
13 transporting books, papers, documents, or other objects
14 designated by the subpoena. Reimbursement shall be paid at a
15 rate not to exceed the rate set forth in section 28-2.5(d)."

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

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

21 SECTION 6. Section 706-606.5, Hawaii Revised Statutes, is
22 amended by amending subsection (1) to read as follows:



1 "(1) Notwithstanding section 706-669 and any other law to
2 the contrary, any person convicted of murder in the second
3 degree, any class A felony, any class B felony, or any of the
4 following class C felonies: section 188-23 relating to
5 possession or use of explosives, electrofishing devices, and
6 poisonous substances in state waters; section 386-98(d)(1)
7 relating to fraud violations and penalties; [~~section 431:10A-~~
8 ~~131(b)(2) relating to insurance fraud; section 431:10C-~~
9 ~~307.7(b)(2) relating to insurance fraud; section 432:1-106(b)(2)~~
10 ~~relating to insurance fraud; section 432D-18.5(b)(2)] section
11 431:2-C(b)(2) relating to insurance fraud; section 707-703
12 relating to negligent homicide in the second degree; section
13 707-711 relating to assault in the second degree; section 707-
14 713 relating to reckless endangering in the first degree;
15 section 707-716 relating to terroristic threatening in the first
16 degree; section 707-721 relating to unlawful imprisonment in the
17 first degree; section 707-732 relating to sexual assault or rape
18 in the third degree; section 707-752 relating to promoting child
19 abuse in the third degree; section 707-757 relating to
20 electronic enticement of a child in the second degree; section
21 707-766 relating to extortion in the second degree; section 708-
22 811 relating to burglary in the second degree; section 708-821~~



1 relating to criminal property damage in the second degree;
2 section 708-831 relating to theft in the first degree as amended
3 by Act 68, Session Laws of Hawaii 1981; section 708-831 relating
4 to theft in the second degree; section 708-835.5 relating to
5 theft of livestock; section 708-836 relating to unauthorized
6 control of propelled vehicle; section 708-839.8 relating to
7 identity theft in the third degree; section 708-839.55 relating
8 to unauthorized possession of confidential personal information;
9 section 708-852 relating to forgery in the second degree;
10 section 708-854 relating to criminal possession of a forgery
11 device; section 708-875 relating to trademark counterfeiting;
12 section 710-1071 relating to intimidating a witness; section
13 711-1103 relating to riot; section 712-1203 relating to
14 promoting prostitution in the second degree; section 712-1221
15 relating to gambling in the first degree; section 712-1224
16 relating to possession of gambling records in the first degree;
17 section 712-1243 relating to promoting a dangerous drug in the
18 third degree; section 712-1247 relating to promoting a
19 detrimental drug in the first degree; section 846E-9 relating to
20 failure to comply with covered offender registration
21 requirements; section 134-7 relating to ownership or possession
22 of firearms or ammunition by persons convicted of certain



1 crimes; section 134-8 relating to ownership, etc., of prohibited
2 weapons; section 134-9 relating to [~~permits~~] licenses to carry,
3 or who is convicted of attempting to commit murder in the second
4 degree, any class A felony, any class B felony, or any of the
5 class C felony offenses enumerated above and who has a prior
6 conviction or prior convictions for the following felonies,
7 including an attempt to commit the same: murder, murder in the
8 first or second degree, a class A felony, a class B felony, any
9 of the class C felony offenses enumerated above, or any felony
10 conviction of another jurisdiction, shall be sentenced to a
11 mandatory minimum period of imprisonment without possibility of
12 parole during such period as follows:

13 (a) One prior felony conviction:

14 (i) Where the instant conviction is for murder in the
15 second degree or attempted murder in the second
16 degree--ten years;

17 (ii) Where the instant conviction is for a class A
18 felony--six years, eight months;

19 (iii) Where the instant conviction is for a class B
20 felony--three years, four months; and



- 1 (iv) Where the instant conviction is for a class C
2 felony offense enumerated above--one year, eight
3 months;
- 4 (b) Two prior felony convictions:
- 5 (i) Where the instant conviction is for murder in the
6 second degree or attempted murder in the second
7 degree--twenty years;
- 8 (ii) Where the instant conviction is for a class A
9 felony--thirteen years, four months;
- 10 (iii) Where the instant conviction is for a class B
11 felony--six years, eight months; and
- 12 (iv) Where the instant conviction is for a class C
13 felony offense enumerated above--three years,
14 four months;
- 15 (c) Three or more prior felony convictions:
- 16 (i) Where the instant conviction is for murder in the
17 second degree or attempted murder in the second
18 degree--thirty years;
- 19 (ii) Where the instant conviction is for a class A
20 felony--twenty years;
- 21 (iii) Where the instant conviction is for a class B
22 felony--ten years; and



1 (iv) Where the instant conviction is for a class C
2 felony offense enumerated above--five years."

3 SECTION 7. Section 806-83, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) Criminal charges may be instituted by written
6 information for a felony when the charge is a class C felony
7 under section 19-3.5 (voter fraud); section 128D-10 (knowing
8 releases); section 132D-14(a)(1), (2)(A), and (3) (penalties for
9 failure to comply with requirements of sections 132D-7, 132D-10,
10 and 132D-16); section 134-24 (place to keep unloaded firearms
11 other than pistols and revolvers); section 134-7(a) and (b)
12 (ownership or possession prohibited); section 134-8 (prohibited
13 ownership); section 134-9 (licenses to carry); section 134-17(a)
14 (relating to false information or evidence concerning
15 psychiatric or criminal history); section 134-51 (deadly
16 weapons); section 134-52 (switchblade knives); section 134-53
17 (butterfly knives); section 188-23 (possession or use of
18 explosives, electrofishing devices, and poisonous substances in
19 state waters prohibited); section 231-34 (attempt to evade or
20 defeat tax); section 231-36 (false and fraudulent statements);
21 section 245-37 (sale or purchase of packages of cigarettes
22 without stamps); section 245-38 (vending unstamped cigarettes);



1 section 245-51 (sale of export cigarettes prohibited); section
2 245-52 (alteration of packaging prohibited); section 291C-12.5
3 (accidents involving substantial bodily injury); section 291E-
4 61.5 (habitually operating a vehicle under the influence of an
5 intoxicant); section 329-41 (prohibited acts B); section 329-42
6 (prohibited acts C); section 329-43.5 (prohibited acts related
7 to drug paraphernalia); section 329C-2 (manufacture,
8 distribution, or possession with intent to distribute an
9 imitation controlled substance to a person under eighteen years
10 of age); section 346-34(d)(2) and (e) (fraud involving food
11 stamps or coupons with a value exceeding \$300); section 346-43.5
12 (medical assistance fraud); section 383-141 (falsely obtaining
13 benefits); [~~section 431:10C-307.7~~] section 431:2-C(b)(2)
14 (insurance fraud); section 482D-7 (violation of fineness
15 standards and stamping requirements); section 485A-301
16 (registration of securities); section 485A-401 (registration of
17 broker-dealers); section 485A-402 (registration of agents);
18 section 485A-403 (registration of investment [~~advisors~~];
19 advisers); section 485A-404 (registration of investment
20 [~~advisor~~] adviser representatives); section 485A-405
21 (registration of federal covered investment [~~advisors~~]
22 advisers); section 485A-501 (general fraud); section 485A-502



1 (prohibited conduct in providing investment advice); section
2 707-703 (negligent homicide in the second degree); section 707-
3 705 (negligent injury in the first degree); section 707-711
4 (assault in the second degree); section 707-713 (reckless
5 endangering in the first degree); section 707-721 (unlawful
6 imprisonment in the first degree); section 707-726 (custodial
7 interference in the first degree); section 707-757 (electronic
8 enticement of a child in the second degree); section 707-766
9 (extortion in the second degree); section 708-811 (burglary in
10 the second degree); section 708-821 (criminal property damage in
11 the second degree); section 708-831 (theft in the second
12 degree); section 708-833.5 (shoplifting); section 708-835.5
13 (theft of livestock); section 708-836 (unauthorized control of
14 propelled vehicle); section 708-836.5 (unauthorized entry into
15 motor vehicle); section 708-839.5 (theft of utility services);
16 section 708-839.8 (identity theft in the third degree); section
17 708-852 (forgery in the second degree); section 708-854
18 (criminal possession of a forgery device); section 708-858
19 (suppressing a testamentary or recordable instrument); section
20 708-875 (trademark counterfeiting); section 708-891.5 (computer
21 fraud in the second degree); section 708-892.5 (computer damage
22 in the second degree); section 708-895.6 (unauthorized computer



1 access in the second degree); section 708-8100 (fraudulent use
2 of a credit card); section 708-8102 (theft/forgery of credit
3 cards); section 708-8103 (credit card fraud by a provider of
4 goods or services); section 708-8104 (possession of unauthorized
5 credit card machinery or incomplete cards); section 708-8200
6 (cable television service fraud in the first degree); section
7 708-8202 (telecommunication service fraud in the first degree);
8 section 709-903.5 (endangering the welfare of a minor in the
9 first degree); section 709-906 (abuse of family or household
10 members); section 710-1016.3 (obtaining a government-issued
11 identification document under false pretenses in the first
12 degree); section 710-1016.6 (impersonating a law enforcement
13 officer in the first degree); section 710-1017.5 (sale or
14 manufacture of deceptive identification document); section 710-
15 1018 (securing the proceeds of an offense); section 710-1021
16 (escape in the second degree); section 710-1023 (promoting
17 prison contraband in the second degree); section 710-1024 (bail
18 jumping in the first degree); section 710-1029 (hindering
19 prosecution in the first degree); section 710-1060 (perjury);
20 section 710-1072.5 (obstruction of justice); section 711-1103
21 (riot); section 711-1109.3 (cruelty to animals/fighting dogs);
22 section 711-1110.9 (violation of privacy in the first degree);



1 section 711-1112 (interference with the operator of a public
2 transit vehicle); section 712-1221 (promoting gambling in the
3 first degree); section 712-1222.5 (promoting gambling aboard
4 ships); section 712-1224 (possession of gambling records in the
5 first degree); section 712-1243 (promoting a dangerous drug in
6 the third degree); section 712-1246 (promoting a harmful drug in
7 the third degree); section 712-1247 (promoting a detrimental
8 drug in the first degree); section 712-1249.6 (promoting a
9 controlled substance in, on, or near schools or school
10 vehicles); section 803-42 (interception, access, and disclosure
11 of wire, oral, or electronic communications, use of pen
12 register, trap and trace device, and mobile tracking device
13 prohibited); or section 846E-9(b) (failure to comply with
14 covered offender registration requirements)."

15 SECTION 8. Section 431:10A-131, Hawaii Revised Statutes,
16 is repealed.

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



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



1 ~~overcharges for benefits under this article for that~~
2 ~~claimant are presented for reconciliation at the same~~
3 ~~time;~~

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

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

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

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

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

19 ~~(3) Misdemeanor if the value of the benefits, recovery, or~~
20 ~~compensation obtained or attempted to be obtained is~~
21 ~~\$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 (c)."]~~

6 SECTION 9. 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~~
21 ~~than one insurer, except when these multiple claims~~
22 ~~are appropriate;~~



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



1 ~~(b) Violation of subsection (a) is a criminal offense and~~
2 ~~shall constitute a:~~

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

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

9 ~~(3) Misdemeanor if the value of the benefits, recovery, or~~
10 ~~compensation obtained or attempted to be obtained is~~
11 ~~\$300 or less.~~

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

18 ~~(d) A person, if acting without malice, shall not be~~
19 ~~subject to civil liability for providing information, including~~
20 ~~filing a report, furnishing oral or written evidence, or giving~~
21 ~~testimony concerning suspected, anticipated, or completed~~
22 ~~insurance fraud to a court, the commissioner, the insurance~~



1 ~~fraud investigations unit, the National Association of Insurance~~
2 ~~Commissioners, any federal, state, or county law enforcement or~~
3 ~~regulatory agency, or another insurer if the information is~~
4 ~~provided only for the purpose of preventing, investigating, or~~
5 ~~prosecuting insurance fraud, except if the person commits~~
6 ~~perjury.~~

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

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

16 ~~(g) All applications for insurance under this article and~~
17 ~~all claim forms provided and required by an insurer, regardless~~
18 ~~of the means of transmission, shall contain, or have attached to~~
19 ~~them, the following or a substantially similar statement, in a~~
20 ~~prominent location and typeface as determined by the insurer:~~
21 ~~"For your protection, Hawaii law requires you to be informed~~
22 ~~that presenting a fraudulent claim for payment of a loss or~~



1 ~~benefit is a crime punishable by fines or imprisonment, or~~
2 ~~both." The absence of such a warning in any application or~~
3 ~~claim form shall not constitute a defense to a charge of~~
4 ~~insurance fraud under this section.~~

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

20 SECTION 10. Section 431:10C-307.8, Hawaii Revised
21 Statutes, is repealed.



1 ~~["§431:10C-307.8 Insurance fraud investigations unit. (a)~~

2 ~~There is established in the insurance division an insurance~~
3 ~~fraud investigations unit.~~

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

17 ~~(c) The purpose of the insurance fraud investigations unit~~
18 ~~shall be to conduct a statewide program for the prevention,~~
19 ~~investigation, and prosecution of insurance fraud cases and~~
20 ~~violations of all applicable state laws relating to insurance~~
21 ~~fraud. The insurance fraud investigations unit may also review~~



1 ~~and take appropriate action on complaints relating to insurance~~
2 ~~fraud."]~~

3 SECTION 11. Section 432:1-106, Hawaii Revised Statutes, is
4 repealed.

5 [~~"[§432:1-106] Insurance fraud; penalties. (a) A person~~
6 ~~commits the offense of insurance fraud if the person acts or~~
7 ~~omits to act with intent to obtain benefits or recovery or~~
8 ~~compensation for services provided, or provides legal assistance~~
9 ~~or counsel with intent to obtain benefits or recovery, through~~
10 ~~the following means:~~

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

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

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

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



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



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

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

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

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

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



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

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

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

14 SECTION 12. Section 432D-18.5, Hawaii Revised Statutes, is
15 repealed.

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



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



1 ~~overcharges for benefits under this article for that~~
2 ~~claimant are presented for reconciliation at the same~~
3 ~~time;~~

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

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

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

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

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

19 ~~(3) Misdemeanor if the value of the benefits, recovery, or~~
20 ~~compensation obtained or attempted to be obtained is~~
21 ~~\$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 (c)."]~~

6 SECTION 13. All rights, powers, functions, and duties of
7 the insurance fraud investigations unit are transferred to the
8 insurance fraud investigations branch.

9 All officers and employees whose functions are transferred
10 by this Act shall be transferred with their functions and shall
11 continue to perform their regular duties upon their transfer,
12 subject to the state personnel laws and this Act.

13 Any employee who, prior to the effective date of this Act,
14 was exempt from civil service and who may be transferred as a
15 consequence of this Act, may continue to retain the employee's
16 exempt status, but shall not be appointed to a civil service
17 position because of this Act. No employee who is transferred as
18 a result of this Act shall suffer any loss of prior service
19 credit, any vacation and sick leave credits previously earned,
20 or other employee benefits or privileges as a consequence of
21 this Act. The director of commerce and consumer affairs may
22 prescribe the duties and qualifications of such employees and



1 fix their salaries without regard to chapter 76, Hawaii Revised
2 Statutes.

3 SECTION 14. All appropriations, records, equipment,
4 machines, files, supplies, contracts, books, papers, documents,
5 maps, and other personal property heretofore made, used,
6 acquired, or held by the insurance fraud investigations unit
7 relating to the functions transferred to the insurance fraud
8 investigations branch shall be transferred with the functions to
9 which they relate.

10 SECTION 15. This Act does not affect rights and duties
11 that matured, penalties that were incurred, and proceedings that
12 were begun, before its effective date.

13 SECTION 16. All rules, policies, procedures, guidelines,
14 and other material adopted or developed by the department of
15 commerce and consumer affairs to implement provisions of the
16 Hawaii Revised Statutes which are reenacted or made applicable
17 to the department of commerce and consumer affairs by this Act,
18 shall remain in full force and effect until amended or repealed
19 by the department of commerce and consumer affairs pursuant to
20 chapter 91, Hawaii Revised Statutes. In the interim, every
21 reference to the insurance fraud investigations unit or director
22 of commerce and consumer affairs in those rules, policies,



1 procedures, guidelines, and other material is amended to refer
2 to the insurance fraud investigations branch or director of
3 commerce and consumer affairs as appropriate.

4 SECTION 17. In codifying the new sections added by section
5 2 of this Act, the revisor of statutes shall substitute
6 appropriate section numbers for the letters used in designating
7 the new sections in this Act.

8 SECTION 18. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 19. This Act shall take effect on July 1, 2020.





LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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LAWRENCE M. REIFURTH
DIRECTOR

RONALD BOYER
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

March 18, 2009
9:00 a.m.

TESTIMONY ON HOUSE BILL NO. 262 H.D. 2 - RELATING TO INSURANCE FRAUD

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is J. P. Schmidt, State Insurance Commissioner ("Commissioner"),
testifying on behalf of the Department of Commerce and Consumer Affairs
("Department"). Thank you for hearing this bill.

The Department strongly supports this bill.

This bill is similar to a consensus bill developed in meetings with private plaintiff's
attorneys, insurance agents' associations, health insurers, property and casualty
insurers and life insurers in 2004. However, this bill does not include the workers'
compensation insurance provisions that were included at that time.

The purpose of this bill is to expand the authority of the Insurance Division's
insurance fraud investigations unit ("IFIU") to investigate and prosecute insurance fraud
beyond auto fraud in all lines of insurance, except workers' compensation insurance,
within the State of Hawaii.

Specifically, this bill:

- (1) Expands the definition of insurance fraud to include the filing of false
insurance applications and fraudulent sales of insurance, whereas the
current definition applies only to the filing of claims;

DCCA Testimony of J.P. Schmidt

March 18, 2009

H.B. No. 262 H.D. 2

Page 2

- (2) Establishes the offense of insurance fraud and criminal and civil penalty provisions in the Insurance Code, Hawaii Revised Statutes (“HRS”) chapter 431 (“Insurance Code”);
- (3) Allows the filing of administrative and civil insurance fraud actions, whereas current law authorizes criminal prosecution only; and
- (4) Establishes the IFIU in Article 2 of the Insurance Code governing the administration of insurance laws, rather than in Article 10C governing motor vehicle insurance.

Currently, the jurisdiction of the insurance fraud investigations unit is governed by HRS § 431:10C-307.8. According to the Attorney General’s Office, the current placement of the IFIU in Article 10C, rather than in Article 2, restricts the IFIU’s jurisdiction to motor vehicle insurance fraud. This placement causes confusion and may prompt arguments by defense counsel that the IFIU lacks authority to prosecute insurance fraud in other insurance lines. The original intent of the Fraud Unit was to cover all lines of insurance. This bill corrects this problem and allows the Insurance Division to pursue fraud in all lines of insurance (except workers compensation insurance).

Whenever any state has focused on pursuing and prosecuting insurance fraud, there has been a reduction in premiums for that state’s citizens. The Coalition Against Insurance Fraud recently published its Hall of Shame, the worst cases of fraud across the nation. Included were several cases of health insurance fraud, homeowner’s insurance fraud, life insurance fraud, business liability fraud as well as auto insurance fraud. We know fraud occurs in every line of insurance. It is a significant cost that, if reduced, will reduce premiums for our citizens.

Additionally, this bill will have the positive effect of assisting in the workload of other state law enforcement agencies by allowing the insurance fraud investigations unit to take action in preventing, investigating, and prosecuting all types of insurance fraud. With the passage of this bill, a more comprehensive approach will be taken to deter perpetrators and make them aware that insurance fraud of any type will not be tolerated.

Insurance fraud continues to affect every household in Hawaii and every business through increased premiums. This bill will improve the Department’s ability to deter insurance fraud and thereby can be expected to save Hawaii’s consumers and businesses money.

Additional staffing and/or funding is not being requested with the passage of this bill. The Insurance Division will evaluate additional staffing needs at a future date to determine if additional staffing may result in greater prevention and deterrence of insurance fraud.

We thank this Committee for the opportunity to present testimony on this matter and ask for your favorable consideration.



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2009

ON THE FOLLOWING MEASURE:

H.B. NO. 262, H.D. 2, RELATING TO INSURANCE FRAUD.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Wednesday, March 18, 2009 **TIME:** 9:00 AM

LOCATION: State Capitol, Room 229

TESTIFIER(S): Mark J. Bennett, Attorney General
or Lance Goto, Deputy Attorney General

Chair Baker and Members of the Committee:

The Department of the Attorney General provides the following comments regarding this bill.

The purpose of this bill is to expand the authority of the Department of Commerce and Consumer Affairs' Insurance Division to prevent, investigate, and civilly and criminally prosecute insurance fraud of all types, beyond the current motor vehicle insurance cases, but excluding worker's compensation cases.

On page 14, the proposed section 431:2-J provides that criminal fines collected from insurance fraud prosecutions shall be deposited into the Compliance Resolution Fund. This provision is inconsistent with, and does not account for, section 706-643(2), Hawaii Revised Statutes, which requires that all criminal fines collected by the court be deposited into the state general fund. If this bill is passed, section 706-643(2) must be amended to allow for special treatment of the fines intended for the Compliance Resolution Fund.

AMERICAN COUNCIL OF LIFE INSURANCE
TESTIMONY IN SUPPORT OF HB 262, HD 2
RELATING TO INSURANCE FRAUD

March 18, 2009

Via E Mail: cpntestimony@capitol.hawaii.gov

Hon. Senator Rosalyn H Baker, Chair
Committee on Commerce and Consumer Protection
State Senate
Hawaii State Capital, Conference Room 229
415 S. Beretania Street
Honolulu, HI 96813

Dear Chair Baker and Committee Members:

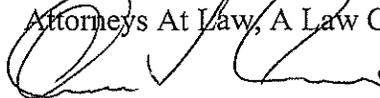
Thank you for the opportunity to testify in support of HB 262, HD 2, relating to Insurance Fraud.

Our firm represents the American Council of Life Insurers ("ACLI"), a national trade association whose three hundred forty (340) member company's account for 94% of the life insurance premiums and 94% of the annuity considerations in the United States among legal reserve life insurance companies. ACLI member company assets account for 93% of legal reserve company total assets. Two hundred fifty-three (253) ACLI member companies currently do business in the State of Hawaii.

Insurance fraud is costly to both the insurance industry and consumers alike.

Accordingly, ACLI supports HB 262, HD 2, which expands the authority of the Insurance Division's newly named Insurance Fraud Investigations Branch. The Fraud Investigations Branch is under the new law tasked to prevent, investigate, and prosecute both civilly and criminally insurance fraud beyond motor vehicle insurance case to all lines of insurance except worker's compensation.

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HAWAII

516 Kawaihae Street Suite E Honolulu, HI 96825

Senate Committee on Commerce & Consumer Protection
Senator Rosalyn H. Baker, Chair

House Bill 262, HD 2 – Relating to Insurance Fraud

Hearing Date: Wednesday – March 18, 2009 Time: 8:30 am

Chair Baker and members of the Committee, the National Association of Insurance and Financial Advisors (NAIFA) Hawaii is an organization made up of life insurance agents and financial advisors across Hawaii, who primarily sell life insurance, long term care, disability income insurance and provide financial advice.

We support this measure.

HB 262, HD 2, will establish a new part in Chapter 431, HRS, titled “Insurance Fraud”. A new “insurance fraud investigations branch” will also be established to regulate insurance fraud. HB 262, HD 2, specifically excludes workers’ compensation.

This measure on insurance fraud has been addressed since the 2004 legislative session in cooperation with Insurance Division. From the 2005 to 2008 legislative sessions, a consensus draft was introduced which represented the stakeholders from the insurance sector and Insurance Division.

Thank you for the opportunity to express our support and we ask for your favorable consideration.

Cynthia Hayakawa
Executive Director
Phone: 394-3451



Hawaii Association of Health Plans

March 18, 2009

The Honorable Rosalyn Baker, Chair
The Honorable David Ige, Vice Chair

Senate Committee on Commerce and Consumer Protection

Re: HB 262 HD2 – Relating to Insurance Fraud

Dear Chair Baker, Vice Chair Ige and Members of the Committee:

My name is Rick Jackson and I am currently President of the Hawaii Association of Health Plans (“HAHP”). HAHP is a non-profit organization consisting of seven (7) member organizations:

AlohaCare
Hawaii Medical Assurance Association
HMSA
Hawaii-Western Management Group, Inc.

MDX Hawai‘i
University Health Alliance
UnitedHealthcare

Our mission is to promote initiatives aimed at improving the overall health of Hawaii. We are also active participants in the legislative process. Before providing any testimony at a Legislative hearing, all HAHP member organizations must be in unanimous agreement of the statement or position.

HAHP appreciates the opportunity to testify in support of HB 262 HD2 which would give the Insurance Commissioner the necessary authority and staffing to investigate, identify and prosecute instances of fraud.

Health care fraud is a drain on the system financially and can jeopardize the security and health care of consumers – both directly and indirectly. The cost of fraud is estimated to be from 3 percent to 5 percent of our nation’s health care expenditures. It is true that everyone pays for fraud through higher health care costs. HAHP supports efforts that strengthen the Insurance Commissioner’s ability to perform in this area.

The measure before the committee today is the latest version of insurance fraud legislation introduced by the insurance division since 2004. During the 2005 legislative session, HAHP reached consensus, along with many other insurers, on an insurance fraud bill. All insurers covered by this proposal met and reached agreement on the content of the measure. Unfortunately, it failed to meet legislative deadlines and did not pass.

The measure before you today represents this collaborative effort and we would respectfully urge the committee to support HB 262 HD2. Thank you for the opportunity to testify today.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Jackson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Rick Jackson
President

**SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

March 18, 2009

House Bill 262, HD 2 Relating to Insurance Fraud

Chair Baker and members of the Senate Committee on Commerce and Consumer Protection, I am Rick Tsujimura, representing State Farm Insurance Companies, a mutual company owned by its policyholders. State Farm supports House Bill 262, HD 2 Relating to Insurance Fraud.

State Farm supports this bill as written. House Bill 262, HD 2 proposes to expand the insurance fraud investigations branch to cover other lines of insurance. This measure represents a compromise reached with the industry and the Department of Commerce and Consumer Affairs on the terms of the expansion.

Thank you for the opportunity to present this testimony.

HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

March 18, 2009

The Honorable Rosalyn Baker, Chair
The Honorable David Ige, Vice Chair
Senate Committee on Commerce and Consumer Protection

Re: HB 262 HD2 – Relating to Insurance Fraud

Dear Chair Baker, Vice Chair Ige and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 262 HD2.

Since the 2004 legislative session, HMSA, along with many other stakeholders have been working on finding consensus language pertaining to fraud and abuse. Since then numerous parties have worked in concert to produce mutually agreeable language. HMSA supports HB 262 HD2 as a means to both give the insurance division greater enforcement authority in this area and also for the insurance industry to protect itself from the potential costs associated with such abuses.

That being said we would like to request one small amendment to clarify the sharing of information between health plans and the Insurance Division. We believe that the current language of the measure may lead to duplicative or unnecessary efforts when reporting fraud information to the Division. This could be clarified by adding a sentence to page 14, line 3:

The insurance fraud investigations branch will work with the insurer or licensee to determine what information shall be provided.

We would also note that this language was included in last year's Conference Committee draft. We believe that this change will give both the health plans and the Division the flexibility to determine what information should be provided to the newly created Branch to ensure it can effectively perform its fraud investigations. Thank you for the opportunity to testify today.

Sincerely,

A handwritten signature in black ink, appearing to read 'JD' followed by a long horizontal stroke.

Jennifer Diesman
Assistant Vice President
Government Relations