

JAN 23 2015

A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1 SECTION 1. Section 431:13-103, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The following are defined as unfair methods of
4 competition and unfair or deceptive acts or practices in the
5 business of insurance:

6 (1) Misrepresentations and false advertising of insurance
7 policies. Making, issuing, circulating, or causing to
8 be made, issued, or circulated, any estimate,
9 illustration, circular, statement, sales presentation,
10 omission, or comparison which:

11 (A) Misrepresents the benefits, advantages,
12 conditions, or terms of any insurance policy;

13 (B) Misrepresents the dividends or share of the
14 surplus to be received on any insurance policy;

15 (C) Makes any false or misleading statement as to the
16 dividends or share of surplus previously paid on
17 any insurance policy;



(D) Is misleading or is a misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;

(E) Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof;

(F) Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy;

(G) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy;

(H) Misrepresents any insurance policy as being shares of stock;

(I) Publishes or advertises the assets of any insurer without publishing or advertising with equal conspicuousness the liabilities of the insurer, both as shown by its last annual statement; or



1 (J) Publishes or advertises the capital of any
2 insurer without stating specifically the amount
3 of paid-in and subscribed capital;

4 (2) False information and advertising generally. Making,
5 publishing, disseminating, circulating, or placing
6 before the public, or causing, directly or indirectly,
7 to be made, published, disseminated, circulated, or
8 placed before the public, in a newspaper, magazine, or
9 other publication, or in the form of a notice,
10 circular, pamphlet, letter, or poster, or over any
11 radio or television station, or in any other way, an
12 advertisement, announcement, or statement containing
13 any assertion, representation, or statement with
14 respect to the business of insurance or with respect
15 to any person in the conduct of the person's insurance
16 business, which is untrue, deceptive, or misleading;

17 (3) Defamation. Making, publishing, disseminating, or
18 circulating, directly or indirectly, or aiding,
19 abetting, or encouraging the making, publishing,
20 disseminating, or circulating of any oral or written
21 statement or any pamphlet, circular, article, or



1 literature which is false, or maliciously critical of
2 or derogatory to the financial condition of an
3 insurer, and which is calculated to injure any person
4 engaged in the business of insurance;

5 (4) Boycott, coercion, and intimidation.

6 (A) Entering into any agreement to commit, or by any
7 action committing, any act of boycott, coercion,
8 or intimidation resulting in or tending to result
9 in unreasonable restraint of, or monopoly in, the
10 business of insurance; or

11 (B) Entering into any agreement on the condition,
12 agreement, or understanding that a policy will
13 not be issued or renewed unless the prospective
14 insured contracts for another class or an
15 additional policy of the same class of insurance
16 with the same insurer;

17 (5) False financial statements.

18 (A) Knowingly filing with any supervisory or other
19 public official, or knowingly making, publishing,
20 disseminating, circulating, or delivering to any
21 person, or placing before the public, or



1 knowingly causing, directly or indirectly, to be
2 made, published, disseminated, circulated,
3 delivered to any person, or placed before the
4 public, any false statement of a material fact as
5 to the financial condition of an insurer; or

6 (B) Knowingly making any false entry of a material
7 fact in any book, report, or statement of any
8 insurer with intent to deceive any agent or
9 examiner lawfully appointed to examine into its
10 condition or into any of its affairs, or any
11 public official to whom the insurer is required
12 by law to report, or who has authority by law to
13 examine into its condition or into any of its
14 affairs, or, with like intent, knowingly omitting
15 to make a true entry of any material fact
16 pertaining to the business of the insurer in any
17 book, report, or statement of the insurer;

18 (6) Stock operations and advisory board contracts.

19 Issuing or delivering or permitting agents, officers,
20 or employees to issue or deliver, agency company stock
21 or other capital stock, or benefit certificates or



1 shares in any common-law corporation, or securities or
2 any special or advisory board contracts or other
3 contracts of any kind promising returns and profits as
4 an inducement to insurance;

5 (7) Unfair discrimination.

6 (A) Making or permitting any unfair discrimination
7 between individuals of the same class and equal
8 expectation of life in the rates charged for any
9 policy of life insurance or annuity contract or
10 in the dividends or other benefits payable
11 thereon, or in any other of the terms and
12 conditions of the contract;

13 (B) Making or permitting any unfair discrimination in
14 favor of particular individuals or persons, or
15 between insureds or subjects of insurance having
16 substantially like insuring, risk, and exposure
17 factors, or expense elements, in the terms or
18 conditions of any insurance contract, or in the
19 rate or amount of premium charge therefor, or in
20 the benefits payable or in any other rights or
21 privilege accruing thereunder;



1 (C) Making or permitting any unfair discrimination
2 between individuals or risks of the same class
3 and of essentially the same hazards by refusing
4 to issue, refusing to renew, canceling, or
5 limiting the amount of insurance coverage on a
6 property or casualty risk because of the
7 geographic location of the risk, unless:

8 (i) The refusal, cancellation, or limitation is
9 for a business purpose which is not a mere
10 pretext for unfair discrimination; or

11 (ii) The refusal, cancellation, or limitation is
12 required by law or regulatory mandate;

13 (D) Making or permitting any unfair discrimination
14 between individuals or risks of the same class
15 and of essentially the same hazards by refusing
16 to issue, refusing to renew, canceling, or
17 limiting the amount of insurance coverage on a
18 residential property risk, or the personal
19 property contained therein, because of the age of
20 the residential property, unless:



1 (i) The refusal, cancellation, or limitation is
2 for a business purpose which is not a mere
3 pretext for unfair discrimination; or

4 (ii) The refusal, cancellation, or limitation is
5 required by law or regulatory mandate;

6 (E) Refusing to insure, refusing to continue to
7 insure, or limiting the amount of coverage
8 available to an individual because of the sex or
9 marital status of the individual; however,
10 nothing in this subsection shall prohibit an
11 insurer from taking marital status into account
12 for the purpose of defining persons eligible for
13 dependent benefits;

14 (F) Terminating or modifying coverage, or refusing to
15 issue or renew any property or casualty policy or
16 contract of insurance solely because the
17 applicant or insured or any employee of either is
18 mentally or physically impaired; provided that
19 this subparagraph shall not apply to accident and
20 health or sickness insurance sold by a casualty
21 insurer; provided further that this subparagraph



1 shall not be interpreted to modify any other
2 provision of law relating to the termination,
3 modification, issuance, or renewal of any
4 insurance policy or contract;

5 (G) Refusing to insure, refusing to continue to
6 insure, or limiting the amount of coverage
7 available to an individual based solely upon the
8 individual's having taken a human
9 immunodeficiency virus (HIV) test prior to
10 applying for insurance; or

11 (H) Refusing to insure, refusing to continue to
12 insure, or limiting the amount of coverage
13 available to an individual because the individual
14 refuses to consent to the release of information
15 which is confidential as provided in section
16 325-101; provided that nothing in this
17 subparagraph shall prohibit an insurer from
18 obtaining and using the results of a test
19 satisfying the requirements of the commissioner,
20 which was taken with the consent of an applicant
21 for insurance; provided further that any



1 applicant for insurance who is tested for HIV
2 infection shall be afforded the opportunity to
3 obtain the test results, within a reasonable time
4 after being tested, and that the confidentiality
5 of the test results shall be maintained as
6 provided by section 325-101;

7 (8) Rebates. Except as otherwise expressly provided by
8 law:

9 (A) Knowingly permitting or offering to make or
10 making any contract of insurance, or agreement as
11 to the contract other than as plainly expressed
12 in the contract, or paying or allowing, or giving
13 or offering to pay, allow, or give, directly or
14 indirectly, as inducement to the insurance, any
15 rebate of premiums payable on the contract, or
16 any special favor or advantage in the dividends
17 or other benefits, or any valuable consideration
18 or inducement not specified in the contract; or
19 (B) Giving, selling, or purchasing, or offering to
20 give, sell, or purchase as inducement to the
21 insurance or in connection therewith, any stocks,



1 bonds, or other securities of any insurance
2 company or other corporation, association, or
3 partnership, or any dividends or profits accrued
4 thereon, or anything of value not specified in
5 the contract;

6 (9) Nothing in paragraph (7) or (8) shall be construed as
7 including within the definition of discrimination or
8 rebates any of the following practices:

9 (A) In the case of any life insurance policy or
10 annuity contract, paying bonuses to policyholders
11 or otherwise abating their premiums in whole or
12 in part out of surplus accumulated from
13 nonparticipating insurance; provided that any
14 bonus or abatement of premiums shall be fair and
15 equitable to policyholders and in the best
16 interests of the insurer and its policyholders;

17 (B) In the case of life insurance policies issued on
18 the industrial debit plan, making allowance to
19 policyholders who have continuously for a
20 specified period made premium payments directly
21 to an office of the insurer in an amount which



1 fairly represents the saving in collection
2 expense;

3 (C) Readjustment of the rate of premium for a group
4 insurance policy based on the loss or expense
5 experience thereunder, at the end of the first or
6 any subsequent policy year of insurance
7 thereunder, which may be made retroactive only
8 for the policy year; and

9 (D) In the case of any contract of insurance, the
10 distribution of savings, earnings, or surplus
11 equitably among a class of policyholders, all in
12 accordance with this article;

13 (10) Refusing to provide or limiting coverage available to
14 an individual because the individual may have a third-
15 party claim for recovery of damages; provided that:

16 (A) Where damages are recovered by judgment or
17 settlement of a third-party claim, reimbursement
18 of past benefits paid shall be allowed pursuant
19 to section 663-10;

20 (B) This paragraph shall not apply to entities
21 licensed under chapter 386 or 431:10C; and



1 (C) For entities licensed under chapter 432 or 432D:

2 (i) It shall not be a violation of this section
3 to refuse to provide or limit coverage
4 available to an individual because the
5 entity determines that the individual
6 reasonably appears to have coverage
7 available under chapter 386 or 431:10C; and

8 (ii) Payment of claims to an individual who may
9 have a third-party claim for recovery of
10 damages may be conditioned upon the
11 individual first signing and submitting to
12 the entity documents to secure the lien and
13 reimbursement rights of the entity and
14 providing information reasonably related to
15 the entity's investigation of its liability
16 for coverage.

17 Any individual who knows or reasonably should
18 know that the individual may have a third-party
19 claim for recovery of damages and who fails to
20 provide timely notice of the potential claim to
21 the entity, shall be deemed to have waived the



1 prohibition of this paragraph against refusal or
2 limitation of coverage. "Third-party claim" for
3 purposes of this paragraph means any tort claim
4 for monetary recovery or damages that the
5 individual has against any person, entity, or
6 insurer, other than the entity licensed under
7 chapter 432 or 432D;

8 (11) Unfair claim settlement practices. Committing or
9 performing with such frequency as to indicate a
10 general business practice any of the following:

11 (A) Misrepresenting pertinent facts or insurance
12 policy provisions relating to coverages at issue;

13 (B) With respect to claims arising under its
14 policies, failing to respond with reasonable
15 promptness, in no case more than fifteen working
16 days, to communications received from:

17 (i) The insurer's policyholder;

18 (ii) Any other persons, including the
19 commissioner; or



1 (iii) The insurer of a person involved in an
2 incident in which the insurer's policyholder
3 is also involved.

4 The response shall be more than an acknowledgment
5 that such person's communication has been
6 received, and shall adequately address the
7 concerns stated in the communication;

8 (C) Failing to adopt and implement reasonable
9 standards for the prompt investigation of claims
10 arising under insurance policies;

11 (D) Refusing to pay claims without conducting a
12 reasonable investigation based upon all available
13 information;

14 (E) Failing to affirm or deny coverage of claims
15 within a reasonable time after proof of loss
16 statements have been completed;

17 (F) Failing to offer payment within thirty calendar
18 days of affirmation of liability, if the amount
19 of the claim has been determined and is not in
20 dispute;



- 1 (G) Failing to provide the insured, or when
2 applicable the insured's beneficiary, with a
3 reasonable written explanation for any delay, on
4 every claim remaining unresolved for thirty
5 calendar days from the date it was reported;
- 6 (H) Not attempting in good faith to effectuate
7 prompt, fair, and equitable settlements of claims
8 in which liability has become reasonably clear;
- 9 (I) Compelling insureds to institute litigation to
10 recover amounts due under an insurance policy by
11 offering substantially less than the amounts
12 ultimately recovered in actions brought by the
13 insureds;
- 14 (J) Attempting to settle a claim for less than the
15 amount to which a reasonable person would have
16 believed the person was entitled by reference to
17 written or printed advertising material
18 accompanying or made part of an application;
- 19 (K) Attempting to settle claims on the basis of an
20 application which was altered without notice,
21 knowledge, or consent of the insured;



- 1 (L) Making claims payments to insureds or
2 beneficiaries not accompanied by a statement
3 setting forth the coverage under which the
4 payments are being made;
- 5 (M) Making known to insureds or claimants a policy of
6 appealing from arbitration awards in favor of
7 insureds or claimants for the purpose of
8 compelling them to accept settlements or
9 compromises less than the amount awarded in
10 arbitration;
- 11 (N) Delaying the investigation or payment of claims
12 by requiring an insured, claimant, or the
13 physician or advanced practice registered nurse
14 of either to submit a preliminary claim report
15 and then requiring the subsequent submission of
16 formal proof of loss forms, both of which
17 submissions contain substantially the same
18 information;
- 19 (O) Failing to promptly settle claims, where
20 liability has become reasonably clear, under one
21 portion of the insurance policy coverage to



1 influence settlements under other portions of the
2 insurance policy coverage;

3 (P) Failing to promptly provide a reasonable
4 explanation of the basis in the insurance policy
5 in relation to the facts or applicable law for
6 denial of a claim or for the offer of a
7 compromise settlement; ~~and~~

8 (Q) Indicating to the insured on any payment draft,
9 check, or in any accompanying letter that the
10 payment is "final" or is "a release" of any claim
11 if additional benefits relating to the claim are
12 probable under coverages afforded by the policy;
13 unless the policy limit has been paid or there is
14 a bona fide dispute over either the coverage or
15 the amount payable under the policy; and

16 (R) Failing to pay the claimant an amount the insurer
17 deems fair within thirty days of a demand for
18 payment of the claim; provided that if after the
19 payment, the fair value of the claim is still in
20 dispute between the insurer and the claimant, the
21 matter may be resolved according to the



1 provisions in the insurance policy; provided
2 further that this subparagraph shall not affect
3 any recourse the first party claimant may have
4 against the insurer;

5 (12) Failure to maintain complaint handling procedures.

6 Failure of any insurer to maintain a complete record
7 of all the complaints which it has received since the
8 date of its last examination under section 431:2-302.
9 This record shall indicate the total number of
10 complaints, their classification by line of insurance,
11 the nature of each complaint, the disposition of these
12 complaints, and the time it took to process each
13 complaint. For purposes of this section, "complaint"
14 means any written communication primarily expressing a
15 grievance;

16 (13) Misrepresentation in insurance applications. Making
17 false or fraudulent statements or representations on
18 or relative to an application for an insurance policy,
19 for the purpose of obtaining a fee, commission, money,
20 or other benefit from any insurer, producer, or
21 individual; and



1 (14) Failure to obtain information. Failure of any
2 insurance producer, or an insurer where no producer is
3 involved, to comply with section 431:10D-623(a), (b),
4 or (c) by making reasonable efforts to obtain
5 information about a consumer before making a
6 recommendation to the consumer to purchase or exchange
7 an annuity."

8 SECTION 2. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect upon its approval.

14
INTRODUCED BY: 



Report Title:

Insurance; First Party Claims; Prompt Payment; Unfair Claim
Settlement Practices

Description:

Makes an insurer's failure to pay a claimant, in a first party insurance claim, an amount the insurer deems fair within thirty days of a demand for payment of the claim an unfair claim settlement practice.

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