

ACT 211

H.B. NO. 811

A Bill for an Act Relating to Insurance Unfair Practices and Frauds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431-641, Hawaii Revised Statutes, is amended to read as follows:

“§431-641 Purpose of sections on unfair practices. The purpose of sections 431-641 to [431-646] 431- is to regulate trade practices in the business of insurance in accordance with the intent of the Congress of the United States as expressed in the act of Congress of March 9, 1945 (Public Law 15, 79th Congress), by defining, or providing for the determination of, all acts, methods, and practices which constitute unfair methods of competition or unfair or deceptive acts or practices in this State, [and in the case of persons domiciled in or resident of this State, in any other state, territory, possession, province, country, or district,] and by prohibiting the ~~trade~~ practices so defined or determined.”

SECTION 2. Section 431-642, Hawaii Revised Statutes, is amended to read as follows:

“§431-642 Unfair methods of competition; unfair or deceptive acts or practices prohibited. No person shall engage in this State in any act or practice which is [prohibited in sections 431-641 to 431-646, or which is] defined [therein] in section 431-643 as, or determined pursuant [thereto,] to section 431-645 to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance. [No person domiciled in or resident of this State shall engage in any

other state, territory, possession, province, country, or district in any act or practice which is prohibited in sections 431-641 to 431-646, or which is defined therein as, or determined pursuant thereto, to be an unfair method of competition or any unfair or deceptive act or practice in the business of insurance. No person shall be subject to criminal penalties if the act or practice is not defined as aforesaid, but is determined to be an unfair practice by the insurance commissioner.]"

SECTION 3. Section 431-643, Hawaii Revised Statutes, is amended to read as follows:

"§431-643 Unfair methods of competition and unfair or deceptive acts or practices defined. The following are defined as unfair methods of competition and unfair [and] or deceptive acts or practices in the business of insurance:

- (1) Misrepresentations and false advertising of [policy contracts:] insurance policies. Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:
 - (A) [Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon;] Misrepresents the benefits, advantages, conditions, or terms of any insurance policy; or
 - (B) [Making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies;] Misrepresents the dividends or share of the surplus to be received on any insurance policy; or
 - (C) [Making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;] Makes any false or misleading statement as to the dividends or share of surplus previously paid on any insurance policy; or
 - (D) [Using any name or title of any policy or class of policies misrepresenting the true nature thereof;] 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; or
 - (E) [Making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance;] Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof; or
 - (F) Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy; or
 - (G) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or
 - (H) Misrepresents any insurance policy as being shares of stock; or

- [(F)] (I) [Publishing] Publishes or [advertising] advertises the assets of any insurer without publishing or advertising with equal conspicuousness the liabilities of [such] the insurer, both as shown by its last annual statement; or
- [(G)] (J) [Publishing] Publishes or [advertising] advertises the capital of any insurer without stating specifically the amount of paid-in and subscribed capital.
- (2) False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of [his] the person's insurance business, which is untrue, deceptive, or misleading.
- (3) Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.
- (4) Boycott, coercion, and intimidation:
 - (A) Entering into any agreement to commit, or by any action committing, any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance[.]; or
 - (B) Entering into any agreement on the condition, agreement, or understanding that a policy will not be issued or renewed unless the prospective insured contracts for another class or an additional policy of the same class of insurance with the same insurer.
- (5) False financial statements:
 - (A) [Filing] Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating, or [delivery] delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of a material fact as to the financial condition of an insurer [with intent to deceive]; or
 - (B) [Making] Knowingly making any false entry of a material fact in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to

whom the insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, [willfully] knowingly omitting to make a true entry of any material fact pertaining to the business of the insurer in any book, report, or statement of the insurer.

- (6) Stock operations and advisory board contracts. Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.
- (7) Unfair discrimination:
 - (A) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of [such] the contract; or
 - (B) Making or permitting any unfair discrimination in favor of particular individuals or persons, or between insureds or subjects of insurance having substantially like insuring, risk, and exposure factors, or expense elements, in the term or conditions of any insurance contract, or in the rate or amount of premium charge therefor, or in the benefits payable or in any other rights or privilege accruing thereunder[.]; or
 - (C) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:
 - (i) The refusal, cancellation, or limitation is for a business purpose which is not a mere pretext for unfair discrimination,
or
 - (ii) The refusal, cancellation, or limitation is required by law or regulatory mandate; or
 - (D) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling or limiting the amount of insurance coverage on a residential property risk, or the personal property contained therein, because of the age of the residential property, unless:
 - (i) The refusal, cancellation, or limitation is for a business purpose which is not a mere pretext for unfair discrimination,
or
 - (ii) The refusal, cancellation, or limitation is required by law or regulatory mandate; or

- (E) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the sex or marital status of the individual; however, nothing in this subparagraph shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits; or
 - (F) To terminate, or to modify coverage or to refuse to issue or refuse to renew any property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired; provided that this subparagraph shall not apply to accident and health insurance sold by a casualty insurer; provided further that this subparagraph shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance or renewal of any insurance policy or contract.
- (8) Rebates. Except as otherwise expressly provided by law:
- (A) Knowingly permitting or offering to make or making any contract of insurance, or agreement as to [such] the contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to [such] the insurance, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or
 - (B) Giving, or selling, or purchasing, or offering to give, sell, or purchase as inducement to [such] the insurance or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.
- (9) Nothing in [item] paragraph (7) or [item] paragraph (8) of this section shall be construed as including within the definition of discrimination or rebates any of the following practices:
- (A) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any [such bonuses] bonus or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the insurer and its policyholders;
 - (B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense;

- (C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for [such] the policy year;
 - (D) In the case of any contract of insurance, the distribution of savings, earnings, or surplus equitably among a class of policyholders, all in accordance with this chapter.
- (10) Unfair claim settlement practices. Committing or performing with such frequency as to indicate a general business practice any of the following:
- (A) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
 - (B) Failing to respond with reasonable promptness to communications, whether received from the insurer's policyholder or any other person, or insurer of the other person, who is involved in an accident in which the insurer's policyholder is also involved, with respect to claims arising under its policies;
 - (C) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
 - (D) Refusing to pay claims without conducting a reasonable investigation based upon all available information;
 - (E) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
 - (F) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;
 - (G) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds;
 - (H) Attempting to settle a claim for less than the amount to which a reasonable person would have believed the person was entitled by reference to written or printed advertising material accompanying or made part of an application;
 - (I) Attempting to settle claims on the basis of an application which was altered without notice, or knowledge or consent of the insured;
 - (J) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made;
 - (K) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;
 - (L) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of

formal proof of loss forms, both of which submissions contain substantially the same information;

(M) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;

(N) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

The commissioner shall by certified mail notify the insurer's agent, as designated pursuant to section 431-102, of each complaint filed with the commissioner under this section.

Three or more written complaints received by the commissioner within any twelve-month period charging separate violations of this section shall constitute a rebuttable presumption of a general business practice.

Evidence as to numbers and types of complaints to the insurance commissioner against an insurer, and the insurance commissioner's complaint experience with other insurers writing similar lines of insurance, shall be admissible in an administrative or judicial proceeding brought under this section; provided no insurer shall be deemed in violation of this section solely by reason of the numbers and types of such complaints except as provided in the immediately preceding paragraph and the presumption is not rebutted.

If it is found, after notice and an opportunity to be heard, that an insurer has violated this section, each instance of noncompliance may be treated as a separate violation of this section for the purposes of section 431-17."

(11) Failure to maintain complaint handling procedures. Failure of any insurer to maintain a complete record of all the complaints which it has received since the date of its last examination under section 431-54. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this paragraph, "complaint" shall mean any written communication primarily expressing a grievance.

(12) Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual."

SECTION 4. Section 431-644, Hawaii Revised Statutes, is amended to read as follows:

"§431-644 Power of Commissioner. The insurance commissioner may examine and investigate into the affairs of every person engaged in the business of insurance in this State [and of any person domiciled in or resident of this State

engaged in the business of insurance in any other state, territory possession, province, country, or district] in order to determine whether the person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by section 431-643.”

SECTION 5. Section 431-645, Hawaii Revised Statutes, is amended to read as follows:

“§431-645 [Desist order for defined or prohibited practices. (a) If, after a hearing thereon of which notice of the hearing and of the charges against him were given such person, the insurance commissioner finds that any person has engaged or is engaging in any act or practice defined in or prohibited under section 431-643 in this State or that any person domiciled in or resident of this State has engaged or is engaging in any act or practice defined in or prohibited under section 431-643 in any other state, territory, possession, province, country, or district, the commissioner shall order the person to desist from such act or practice.

(b) The desist order shall become final upon expiration of the time allowed for appeals from the commissioner’s orders, if no appeal is taken, or, in event of such an appeal, upon final decision of the court if the court affirms the commissioner’s order or dismisses the appeal. An intervenor in the hearing shall have the right to appeal as provided in section 431-646(c).

(c) In event of such an appeal, to the extent that the commissioner’s order is affirmed the court shall issue its own order commanding obedience to the terms of the commissioner’s order.

(d) No order of the commissioner pursuant to this section or order of court to enforce it shall in any way relieve or absolve any person affected by the order from any other liability, penalty, or forfeiture under law.]

Hearings. (a) Whenever the commissioner shall have reason to believe that any person has been engaged or is engaging in this State in any unfair method of competition or any unfair or deceptive act or practice whether or not defined in section 431-643, and that a proceeding by the commissioner in respect thereto would be to the interest of the public, the commissioner shall issue and serve upon the person a statement of the charges in that respect and a notice of hearing thereon to be held at a time and place fixed in the notice, which shall not be less than fifteen days after the date of the service thereof.

(b) At the time and place fixed for the hearing, the person shall have an opportunity to be heard and to show cause why an order should not be made by the commissioner requiring the person to cease and desist from the acts, methods or practices so complained of.

(c) Procedures at the hearing shall be governed by chapter 91.”

SECTION 6. Section 431-646, Hawaii Revised Statutes, is amended to read as follows:

“§431-646 [Curtilment of undefined practices. (a) If the insurance commissioner believes that any person engaged in the insurance business is engaging in this State, or that any person domiciled in or resident of this State is engaging in any other state, territory, possession, province, country, or district, in any method of competition or in any act or practice in the conduct of such business which is not

defined in section 431-643, but that the method of competition is unfair or that the act or practice is unfair or deceptive and that a proceeding by him in respect thereto would be in the public interest, he shall, after a hearing of which notice of the hearing and of the charges against him are given the person, make a written report of his findings of fact relative to the charges and serve a copy thereof upon the person and any intervenor at the hearing.

(b) If the report charges a violation of section 431-643 and if the method of competition, act, or practice has not been discontinued, the commissioner may, through the attorney general, at any time after the service of the report, cause an action to be instituted to enjoin and restrain the person from engaging in such method, act, or practice. In the action the court may grant a restraining order or injunction upon such terms as may be just; but this State shall not be required to give security before the issuance of any such order or injunction. If a stenographic record of the proceedings in the hearing before the commissioner was made, a certified transcript thereof including all evidence taken and the report and findings shall be received in evidence in the action.

(c) If the commissioner's report made pursuant to subsection (a) of this section or order on hearing made pursuant to section 431-645 does not charge a violation of section 431-643, then any intervenor in the proceedings may appeal therefrom within the time and in the manner provided in this chapter for appeals from the commissioner generally.]

Cease and desist and penalty orders; judicial review. (a) If, after the hearing, the commissioner shall determine that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, the commissioner shall reduce the findings to writing and shall issue and cause to be served upon the person charged with the violation a copy of the findings and an order requiring the person to cease and desist from engaging in the method of competition, act or practice. If the act or practice is a violation of section 431-643, the commissioner may, at the commissioner's discretion, order any one or more of the following:

- (1) Payment of a monetary penalty of not more than \$1,000 for each and every act or violation but not to exceed an aggregate penalty of \$10,000, unless the person knew or reasonably should have known that the person was in violation of section 431-643, in which case the penalty shall be not more than \$5,000 for each and every act or violation but not to exceed an aggregate penalty of \$50,000 in any six month period.
- (2) Suspension or revocation of the person's license, if the person knew or reasonably should have known that the person was in violation of section 431-643.

(b) Any person aggrieved by an order of the commissioner under section 431-646 or section 431-647 may obtain judicial review of the order in the manner provided for by chapter 91."

SECTION 7. Section 431-647, Hawaii Revised Statutes, is amended to read as follows:

"§431-647 [Unfair claim settlement practices. (a) No insurer doing business in this State shall engage in unfair claim settlement practices. Any of the following acts by an insurer, if committed without just cause and performed with such frequency as to indicate a general business practice, shall constitute unfair claim settlement practices:

- (1) Misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;
- (2) Failure to respond with reasonable promptness to communications, whether received from the insurer's policyholder or any other person, or insurer of such other person, who is involved in an accident in which the insurer's policyholder is also involved, with respect to claims arising under its policies;
- (3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under its policies;
- (4) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims submitted in which liability has become reasonably clear; or
- (5) Compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them.

(b) Evidence as to numbers and types of complaints to the insurance commissioner against an insurer, and said insurance commissioner's complaint experience with other insurers writing similar lines of insurance, shall be admissible in an administrative or judicial proceeding brought under the chapter; provided no insurer shall be deemed in violation of this section solely by reason of the numbers and types of such complaints.

(c) If it is found, after notice and an opportunity to be heard, that an insurer has violated this section, each instance of noncompliance may be treated as a separate violation of this section for the purposes of section 431-17.]

Penalty for violation of cease and desist orders. Any person who violates a cease and desist order of the commissioner under section 431-646 may be subject at the discretion of the commissioner, after notice and hearing and upon order of the commissioner, to either or both of the following:

- (1) A monetary penalty of not more than \$10,000 for each and every act in violation of the cease and desist order; or
- (2) Suspension or revocation of the person's license."

SECTION 8. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§431- Provisions of sections additional to existing laws. The powers vested in the commissioner by sections 431-643 to 431-647 shall be additional to any other power to enforce penalties, fines, or forfeitures authorized by law with respect to the methods, acts, and practices hereby declared to be unfair or deceptive."

SECTION 9. Statutory material to be repealed is bracketed. New material is underscored.¹

SECTION 10. This Act shall take effect upon its approval.

(Approved June 7, 1983)

Note

1. Edited pursuant to HRS §23G-16.5.