

ACT 125

S.B. NO. 614

A Bill for an Act Relating to Health Insurance.

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

SECTION 1. Insurance fraud is on the rise both locally and nationally. Everyone is adversely affected by insurance fraud, whether impacted directly as

victims of insurance fraud or indirectly through the payment of increased insurance premiums. Insurance fraud costs every household throughout the United States an average of more than \$500 annually. In New Jersey, the cost for no-fault insurance fraud alone was estimated to be over \$246 annually per household.

Insurance fraud has also increasingly affected costs within the health insurance industry. Industry health care fraud losses are estimated at three to fourteen per cent of the \$1,200,000,000,000 in annual national health care costs. This is equivalent to approximately \$36,000,000,000 to \$144,000,000,000 annually. In Hawaii, based on the conservative estimate that insurance fraud amounts to three per cent of annual Hawaii health care costs, insurance fraud causes losses that exceed \$60,000,000 annually.

In 1998, the legislature passed Act 155, Session Laws of Hawaii 1998, to address motor vehicle insurance fraud. Act 155 established an insurance fraud investigations unit in the motor vehicle provisions of the insurance code. Act 155 also established penalties for the offense of insurance fraud and provided immunity from civil liability for persons reporting insurance fraud.

However, insurance fraud is not exclusively a motor vehicle insurance problem and occurs across all lines of insurance. Encouraging fraud reporting across a larger portion of the health insurance industry would cut fraud losses and further reduce costs to the consumer.

The purpose of this Act is to provide immunity from civil liability for persons reporting health insurance fraud.

SECTION 2. Chapter 431, part I, Hawaii Revised Statutes, is amended by adding a new section to article 10A, to be appropriately designated and to read as follows:

“§431:10A- Insurance fraud; penalties. (a) A person commits the offense of insurance fraud if the person acts or omits to act with intent to obtain benefits or recovery or compensation for services provided, or provides legal assistance or counsel with intent to obtain benefits or recovery, through the following means:

- (1) Knowingly presenting, or causing or permitting to be presented, with the intent to defraud, any false information on a claim;
- (2) Knowingly presenting, or causing or permitting to be presented, any false claim for the payment of a loss;
- (3) Knowingly presenting, or causing or permitting to be presented, multiple claims for the same loss or injury, including presenting multiple claims to more than one insurer, except when these multiple claims are appropriate;
- (4) Knowingly making, or causing or permitting to be made, any false claim for payment of a health care benefit;
- (5) Knowingly submitting, or causing or permitting to be submitted, a claim for a health care benefit that was not used by, or provided on behalf of, the claimant;
- (6) Knowingly presenting, or causing or permitting to be presented, multiple claims for payment of the same health care benefit except when these multiple claims are appropriate;
- (7) Knowingly presenting, or causing or permitting to be presented, for payment any undercharges for benefits on behalf of a specific claimant unless any known overcharges for benefits under this article for that claimant are presented for reconciliation at the same time;
- (8) Aiding, or agreeing or attempting to aid, soliciting, or conspiring with any person who engages in an unlawful act as defined under this section; or

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

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

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

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

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

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

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

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

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

SECTION 3. Chapter 432, part I, Hawaii Revised Statutes, is amended by adding a new section to article 1, to be appropriately designated and to read as follows:

“**§432:1- Insurance fraud; penalties.** (a) A person commits the offense of insurance fraud if the person acts or omits to act with intent to obtain benefits or recovery or compensation for services provided, or provides legal assistance or counsel with intent to obtain benefits or recovery, through the following means:

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

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

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

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

(5) Knowingly submitting, or causing or permitting to be submitted, a claim for a health care benefit that was not used by, or provided on behalf of, the claimant;

(6) Knowingly presenting, or causing or permitting to be presented, multiple claims for payment of the same health care benefit except when these multiple claims are appropriate;

- (7) Knowingly presenting, or causing or permitting to be presented, for payment any undercharges for benefits on behalf of a specific claimant unless any known overcharges for benefits under this article for that claimant are presented for reconciliation at the same time;
 - (8) Aiding, or agreeing or attempting to aid, soliciting, or conspiring with any person who engages in an unlawful act as defined under this section; or
 - (9) Knowingly making, or causing or permitting to be made, any false statements or claims by, or on behalf of, any person or persons during an official proceeding as defined by section 710-1000.
- (b) Violation of subsection (a) is a criminal offense and shall constitute a:
- (1) Class B felony if the value of the benefits, recovery, or compensation obtained or attempted to be obtained is more than \$20,000;
 - (2) Class C felony if the value of the benefits, recovery, or compensation obtained or attempted to be obtained is more than \$300; or
 - (3) Misdemeanor if the value of the benefits, recovery, or compensation obtained or attempted to be obtained is \$300 or less.
- (c) Where the ability to make restitution can be demonstrated, any person convicted under this section shall be ordered by a court to make restitution to an insurer or any other person for any financial loss sustained by the insurer or other person caused by the act or acts for which the person was convicted.
- (d) A person, if acting without malice, shall not be subject to civil liability for providing information, including filing a report, furnishing oral or written evidence, providing documents, or giving testimony concerning suspected, anticipated, or completed public or private insurance fraud to a court, the commissioner, the insurance fraud investigations unit, the National Association of Insurance Commissioners, any federal, state, or county law enforcement or regulatory agency, or another insurer if the information is provided only for the purpose of preventing, investigating, or prosecuting insurance fraud, except if the person commits perjury.
- (e) This section shall not supersede any other law relating to theft, fraud, or deception. Insurance fraud may be prosecuted under this section, or any other applicable section, and may be enjoined by a court of competent jurisdiction.
- (f) An insurer shall have a civil cause of action to recover payments or benefits from any person who has intentionally obtained payments or benefits in violation of this section; provided that no recovery shall be allowed if the person has made restitution under subsection (c).”

SECTION 4. Chapter 432D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§432D- Insurance fraud; penalties.** (a) A person commits the offense of insurance fraud if the person acts or omits to act with intent to obtain benefits or recovery or compensation for services provided, or provides legal assistance or counsel with intent to obtain benefits or recovery, through the following means:

- (1) Knowingly presenting, or causing or permitting to be presented, with the intent to defraud, any false information on a claim;
- (2) Knowingly presenting, or causing or permitting to be presented, any false claim for the payment of a loss;
- (3) Knowingly presenting, or causing or permitting to be presented, multiple claims for the same loss or injury, including presenting multiple claims to more than one insurer, except when these multiple claims are appropriate;
- (4) Knowingly making, or causing or permitting to be made, any false claim for payment of a health care benefit;

- (5) Knowingly submitting, or causing or permitting to be submitted, a claim for a health care benefit that was not used by, or provided on behalf of, the claimant;
 - (6) Knowingly presenting, or causing or permitting to be presented, multiple claims for payment of the same health care benefit except when these multiple claims are appropriate;
 - (7) Knowingly presenting, or causing or permitting to be presented, for payment any undercharges for benefits on behalf of a specific claimant unless any known overcharges for benefits under this article for that claimant are presented for reconciliation at the same time;
 - (8) Aiding, or agreeing or attempting to aid, soliciting, or conspiring with any person who engages in an unlawful act as defined under this section; or
 - (9) Knowingly making, or causing or permitting to be made, any false statements or claims by, or on behalf of, any person or persons during an official proceeding as defined by section 710-1000.
- (b) Violation of subsection (a) is a criminal offense and shall constitute a:
- (1) Class B felony if the value of the benefits, recovery, or compensation obtained or attempted to be obtained is more than \$20,000;
 - (2) Class C felony if the value of the benefits, recovery, or compensation obtained or attempted to be obtained is more than \$300; or
 - (3) Misdemeanor if the value of the benefits, recovery, or compensation obtained or attempted to be obtained is \$300 or less.
- (c) Where the ability to make restitution can be demonstrated, any person convicted under this section shall be ordered by a court to make restitution to an insurer or any other person for any financial loss sustained by the insurer or other person caused by the act or acts for which the person was convicted.
- (d) A person, if acting without malice, shall not be subject to civil liability for providing information, including filing a report, furnishing oral or written evidence, providing documents, or giving testimony concerning suspected, anticipated, or completed public or private insurance fraud to a court, the commissioner, the insurance fraud investigations unit, the National Association of Insurance Commissioners, any federal, state, or county law enforcement or regulatory agency, or another insurer if the information is provided only for the purpose of preventing, investigating, or prosecuting insurance fraud, except if the person commits perjury.
- (e) This section shall not supersede any other law relating to theft, fraud, or deception. Insurance fraud may be prosecuted under this section, or any other applicable section, and may be enjoined by a court of competent jurisdiction.
- (f) An insurer shall have a civil cause of action to recover payments or benefits from any person who has intentionally obtained payments or benefits in violation of this section; provided that no recovery shall be allowed if the person has made restitution under subsection (c).”

SECTION 5. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 2003.

(Approved June 2, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.