

---

---

## 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;



- 1 (D) Is misleading or is a misrepresentation as to the  
2 financial condition of any insurer, or as to the  
3 legal reserve system upon which any life insurer  
4 operates;
- 5 (E) Uses any name or title of any insurance policy or  
6 class of insurance policies misrepresenting the  
7 true nature thereof;
- 8 (F) Is a misrepresentation for the purpose of  
9 inducing or tending to induce the lapse,  
10 forfeiture, exchange, conversion, or surrender of  
11 any insurance policy;
- 12 (G) Is a misrepresentation for the purpose of  
13 effecting a pledge or assignment of or effecting  
14 a loan against any insurance policy;
- 15 (H) Misrepresents any insurance policy as being  
16 shares of stock;
- 17 (I) Publishes or advertises the assets of any insurer  
18 without publishing or advertising with equal  
19 conspicuousness the liabilities of the insurer,  
20 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



# H.B. NO. 1266

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



# H.B. NO. 1266

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;



# H.B. NO. 1266

- 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



# H.B. NO. 1266

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





**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.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

